

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KENNETH ASHFORD

Petitioner

vs.

MIKE WENEROWICZ, ET AL.,

Respondents

: No. 3:11-CV-1060
:
: (JUDGE NELSON)
:
:
:
: (Magistrate Judge Smyser)
:
:

RESPONDENT'S REPRODUCED RECORD

Respectfully submitted,



Duane Ramseur
Senior Deputy Prosecutor
Office of the District Attorney
Supreme Court I.D. # 206132
York County Judicial Center
45 North George Street
York, PA 17401
(717) 771-9600

TABLE OF CONTENTS

Volume I

1. Trial Transcripts	1
2. Verdict	266
3. Motion for Arrest of Judgment.....	272
4. Trial Court's May 26, 2009 Order Returning Motion for Arrest of Judgment.....	279
5. Supplemental Motion	280
6. Transcript on Hearing on Counsel's Motion to Withdraw	284
7. Trial Court's Order granting Counsel's Motion to Withdraw	292

Volume II

8. Sentencing Transcript.....	293
9. Notice of Appeal	308
10. Direction To File 1925(b) Statement	339
11. 1925(b) Statement	340
12. 1925(a) Opinion	346
13. Motion for Extension of Time to File Brief.....	358
14. Certificate of Remittal.....	361
15. Superior Court's Order of January 13, 2010.....	364
16. Trial Court's Order of January 28, 2010.....	365
17. Superior Court's Order Dismissing Appeal for Failure to File Brief.....	366
18. Supreme Court's Order Denying Petition for Allowance of Appeal Nunc Pro Tunc	368
19. Petitioner's Federal Habeas Corpus Petition.....	369

20. USDC Order ordering the Respondent's to Respond.....	391
21. York County Court of Common Pleas Docketing Statement	393
22. Superior Court's Docketing Statement	412
23. Supreme Court's Docketing Statement	416

IN THE COURT OF COMMON PLEAS OF YORK COUNTY,
PENNSYLVANIA



COMMONWEALTH	:	CP-67-CR-0002467-2008
	:	
VS	:	
	:	
KENNETH W. ASHFORD	:	

York, Pa., Monday, May 11, 2009
Tuesday, May 12, 2009

Before the Honorable Thomas H. Kelley, VI, Judge

APPEARANCES:

JUSTIN F. KOBESKI, Esquire
Assistant District Attorney
For the Commonwealth

RONALD J. GROSS, Esquire
For the Defendant

* * *

TRANSCRIPT OF PROCEEDINGS

Reported by:

Judith A. Greenholt, RPR
Official Court Reporter

I N D E X
WITNESSES

<u>FOR THE COMMONWEALTH:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
John D. Brenneman	77	94	104	--
Thomas R. McCune	106	117	--	--
Ciprian Igwe	125	129	--	--
John D. Brenneman, recalled	132	136	143	--
Shawn Brady	146	159	170	--
 <u>FOR THE DEFENDANT:</u>				
Eloise white	192	203	210	--

EXHIBITS

<u>COMMONWEALTH EXHIBIT NOS.</u>	<u>ADMITTED</u>
1 - Photographs	174
2 - VHS tape	174
4 - Screwdriver	174
5 - Property sheet	174
 <u>DEFENDANT'S EXHIBIT NOS.</u>	
1 - Photographs	211

1 PROCEEDINGS HELD MONDAY, MAY 11, 2009

2 * * *

3 (The following discussion occurred in
4 chambers:)

5 THE COURT: So, there is a Rule 600
6 motion pending. Have you seen something, because I
7 haven't seen it?

8 ATTORNEY GROSS: Yes, Your Honor. I
9 think you may have, because you forwarded one to my
10 office that was filed by my client pro se. I have not
11 filed any motions from counsel. Therefore, I don't
12 believe there was one pending through counsel that's
13 meritorious at this time.

14 THE COURT: I am not going to consider
15 it. You are representing him. If I got a motion and I
16 forwarded it to you, the reason I forwarded it was
17 because I didn't accept it. I wanted to forward it so
18 you could accept it. I am assuming that the fact that
19 you received it and haven't filed anything is it
20 probably lacks a substantial amount of merit to begin
21 with. But, you haven't filed anything, so there is
22 nothing pending.

23 ATTORNEY GROSS: Correct.

24 THE COURT: Any Rule 600 motion is waived
25 because there has not been a motion filed.

1 ATTORNEY KOBESKI: Count 1 is charged as
2 a criminal attempt burglary. The gradation is an F-1.
3 I believe it should be amended to an F-2. I believe it
4 is not for overnight accommodation. I believe there is
5 an argument the attempted burglary was the courthouse.
6 The gradation is amended to F-2 here.

7 THE COURT: What do you think my couch is
8 for?

9 ATTORNEY KOBESKI: Count 2, the criminal
10 trespass, we are going to withdraw that offense because
11 Count 3, the criminal attempt criminal trespass, I think
12 that's more appropriate.

13 THE COURT: We'll take care of that
14 outside the earshot of the jury.

15 ATTORNEY KOBESKI: Yes, Judge.

16 THE COURT: You can amend. Obviously,
17 you are amending down and there is not going to be an
18 objection?

19 ATTORNEY GROSS: None.

20 THE COURT: All right. Okay. I don't
21 know whether -- we'll take care of that. I don't think
22 we need to deal with that right away.

23 Let's take a break.

24 (The discussion in chambers was
25 concluded.)

* * *

(The jury panel entered the courtroom at
10:55 a.m.)

* * *

THE COURT: You may swear them now.

* * *

(The prospective jury panel was sworn at
11:00 a.m.)

* * *

THE COURT: Good morning, ladies and
gentlemen.

THE JURY: Good morning.

THE COURT: My name is Tom Kelley. I am
the judge that's going to be presiding over the case.
The case is the Commonwealth versus Kenneth Ashford.

Attorney Kobeski, please call the case.

ATTORNEY KOBESKI: May it please the
Court, ladies and gentlemen. This is the case of the
Commonwealth versus Kenneth Ashford. It is Case Number
2467 of 2008. And this is the scheduled date and time
for a jury trial. The Commonwealth is prepared to
proceed.

THE COURT: Attorney Gross.

ATTORNEY GROSS: Good morning.

THE COURT: You may proceed.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ATTORNEY GROSS: Yes, Your Honor.

THE COURT: Are you ready to proceed?

ATTORNEY GROSS: Yes, Your Honor. Thank
you.

THE COURT: All right. Ladies and
gentlemen, the procedure that we are about to embark
upon is a procedure known as voir dire. This being your
first day here for jury duty, I will tell you a little
about the process. Voir dire is actually two French
verbs put together which means to see and to speak. It
is a chance for myself and the attorneys to ask you
certain questions concerning qualifications to sit in
this case as jurors. The whole reason and rationale for
the questions is to ensure that everyone who is selected
to be a juror in this case will be fair and impartial,
and that you come to this process with no preconceived
notions which would make it difficult for you to be fair
and impartial.

I am going to ask you -- actually, what I
am going to do, I am going to explain some basic
principles that apply to the trial in the criminal case.
Thereafter, I am going to ask you some questions. After
I have concluded my questions, the attorneys are going
to ask you specific questions concerning any thoughts
that they have about your ability to be fair and

1 impartial. Okay. I don't think any of the questions
2 will be too probing. However, if there is an answer
3 that any of you need to give that you believe is
4 somewhat sensitive, if you could let me know and we'll
5 take up matters up here at sidebar. Okay.

6 Also, when I ask the questions, I am
7 going to frame my questions in such a way that if you
8 have an affirmative response to any of my questions,
9 then you will raise your hand. After you have raised
10 your hand, I will go down from left to right, first row,
11 second row, third row, fourth row, et cetera.

12 Now, concerning those basic principles of
13 law, let me discuss some basic principles that will
14 apply to the trial of the criminal case. Listen very
15 carefully to what I have to say, because later, as I
16 told you previously, you will be questioned by me and
17 the attorneys concerning those principles of law.

18 So, at the beginning, I must tell you
19 that if you are selected to be a member of the trial
20 jury, it will be your duty to apply the law as I give it
21 to you. That will be part of your oath as jurors in
22 this case. It would be highly improper to permit each
23 juror to decide for himself or herself what law to apply
24 to the trial of the criminal case. The law which
25 applies to the trial of the criminal case must be in

1 accordance with the Constitution of the United States,
2 the Constitution of the Commonwealth of Pennsylvania,
3 the laws as enacted by our state legislature, and the
4 Rules of Criminal Procedure as established by the
5 Supreme Court of Pennsylvania.

6 so, it is the responsibility of the judge
7 to tell the jury what the law is. It is the
8 responsibility of the jury to apply that law. If you
9 cannot or will not do that, you should not be selected
10 as a juror in a criminal case.

11 The Defendant is charged with certain
12 offenses, including burglary. The charges are not
13 evidence. Just because a person has been arrested and
14 had informations filed by the District Attorney's Office
15 and is brought here for trial, that's not any evidence
16 against the Defendant. Charges are only charges. This
17 is because all persons who come before the Court for
18 trial are presumed to be innocent. And the presumption
19 of innocence remains until such time as the Commonwealth
20 of Pennsylvania through the District Attorney's Office
21 presents evidence in open court which proves the
22 Defendant's guilt beyond a reasonable doubt.

23 what a reasonable doubt is will be
24 explained to you if you are selected to be a member of
25 the trial jury. Let me just say at this point it means

1 beyond a reasonable doubt. It does not mean beyond all
2 doubt or to a mathematical certainty.

3 The burden is on the Commonwealth
4 throughout the trial and relates to all the elements of
5 the crimes charged against the Defendant.

6 In determining the guilt or innocence of
7 the Defendant, the only evidence that may be considered
8 is evidence that comes from the witness stand here in
9 open court. The charges themselves are not evidence.
10 The law says that a defendant is presumed to be innocent
11 until such time as the Commonwealth proves him guilty
12 beyond a reasonable doubt. And that cloak of innocence
13 remains with the Defendant throughout the entire trial
14 and right into the jury room when the jury begins
15 deliberating upon its verdict. This is a principle
16 which each of you must be able to accept or you should
17 not serve as a juror in a criminal case.

18 There is another important point of
19 constitutional law that I want to explain to you. A
20 defendant does not need to present any evidence during
21 the course of the trial, nor does the Defendant need to
22 take the witness stand. This must be clearly understood
23 and accepted by you. The Defendant does have a
24 constitutional right to say, you have made the charges,
25 go ahead and prove them.

1 You must understand that the Defendant
2 does not have to testify. He does not have to produce
3 evidence. And the trial jury may not draw any inference
4 adverse to the Defendant if that turns out to be the
5 case in this case.

6 Of course, if the Defendant does present
7 evidence or if the Defendant does take the witness
8 stand, the jury may consider that evidence, along with
9 all the other evidence in the case, in determining
10 whether or not the Commonwealth has proven the Defendant
11 guilty beyond a reasonable doubt.

12 Jurors have a duty of determining what
13 the credibility of witnesses is. In order to do so,
14 they have to determine believability. Credibility is
15 just another word for believability, believability of
16 the witnesses.

17 I must tell you that if you are selected
18 to be a juror, it will be your duty to analyze the
19 evidence and determine credibility of the various
20 witnesses. You must analyze whether and to what extent
21 they had the opportunity to see, to hear, and to
22 understand the things about which they testified. No
23 one comes before a jury with a ticket entitling him or
24 her to be believed. The jury is the final and only
25 authority as to credibility of the various witnesses.

1 And, the jury may not consider the credibility of any
2 witness by any standard different than it does the
3 credibility of every other witness. Okay.

4 That's pretty much the basic issues
5 relating to a trial that I want to explain to you.

6 what I would like to do now at this point
7 is ask you some specific questions concerning your
8 ability to be a juror in this case.

9 First question is, is any member of the
10 panel under the age of 18, or is any member of the panel
11 not a citizen of the United States or not a resident of
12 York County, or has any member of the panel been
13 convicted of a crime punishable by imprisonment for more
14 than one year and you have not been granted a pardon or
15 amnesty therefor? If any of those things apply, raise
16 your hand.

17 (No response.)

18 THE COURT: No affirmative responses.

19 Are any of you unable to or are you
20 having trouble understanding the English language?

21 (No response.)

22 THE COURT: No affirmative responses.

23 Do any of you have any physical, mental,
24 or emotional disability which would make it difficult
25 for you to hear and concentrate upon the testimony of

1 the witnesses in this case? Anyone?

2 JUROR NO. 257: (Indicating)

3 THE COURT: Yes, sir. Your juror number,
4 please.

5 JUROR NO. 257: 257.

6 THE COURT: 257?

7 JUROR NO. 257: Yes, sir. I have a
8 stainless stapes in my left ear. I had a stapedectomy.
9 And I have trouble discriminating against accents,
10 sometimes understanding people, that type of thing.
11 Sometimes I get vibrations in the ear. Sometimes I get
12 what's called hyperacusis, like sometimes the volume
13 will get louder. I don't seem to have any trouble
14 today, but microphones --

15 THE COURT: You haven't had any
16 difficulty hearing me?

17 JUROR NO. 257: Not at all.

18 THE COURT: Even over my accent?

19 JUROR NO. 257: Actually, when I went to
20 college -- in 2003, I graduated -- I couldn't take
21 Spanish. They had to get me out of that because they
22 couldn't reproduce the sounds.

23 THE COURT: Well, everyone has an accent
24 for you. Right? Well, if you have any difficulty --

25 JUROR NO. 257: I meant foreign accents.

1 THE COURT: If you have any difficulty
2 whatsoever, if you could point that out and we can
3 always ask witnesses or individuals who are speaking to
4 repeat questions. And actually, what I need for you to
5 do is, if you could, promise that if there is anything,
6 if you are selected as a juror, anything you don't hear,
7 if you could let us know immediately, because it is far
8 easier for us to kind of go back at that point than it
9 is for you to say, hey, during this testimony, I didn't
10 hear very well, I couldn't understand very well. So,
11 you promise to do that?

12 JUROR NO. 257: I promise.

13 THE COURT: Thank you very much.

14 Counsel, I am not sure, is there anyone
15 anticipated to testify in this case that may have a
16 heavy accent?

17 ATTORNEY KOBESKI: Your Honor, we do
18 have a witness that may have an accent.

19 THE COURT: Do you know -- he may be
20 able to -- it sounds to me like there is specific
21 accents he may have difficulty with.

22 ATTORNEY KOBESKI: I believe it is West
23 African, Judge.

24 THE COURT: We will have to see, sir.
25 Depending how heavy the West African accent is, we may

1 have some difficulty. But, as long as you are willing
2 to promise us that you will ask any questions of
3 anything that you miss, we should be okay. All right?

4 JUROR NO. 257: Yes, sir.

5 THE COURT: Thank you very much.

6 Anyone else?

7 (No response.)

8 THE COURT: Okay. I am going to
9 introduce some of the players involved in this case and
10 I want to ask you whether or not you are related to any
11 of those people by blood or marriage or whether you have
12 any kind of close association with those people, whether
13 it be professional or personal. The first person I'd
14 like to introduce is the Assistant District Attorney,
15 Attorney Kobeski. Does anybody recognize or know or are
16 you related to Attorney Kobeski?

17 (No response.)

18 THE COURT: No affirmative responses.

19 Counsel for the Defendant is Attorney Ron
20 Gross. Does anybody recognize or know Ron Gross?

21 JUROR NO. 234: (Indicating)

22 THE COURT: Ma'am, your juror number is?

23 JUROR NO. 234: 234.

24 THE COURT: 234?

25 JUROR NO. 234: Yes.

1 THE COURT: How do you know Attorney
2 Gross?

3 JUROR NO. 234: I have seen him at my
4 workplace a few times.

5 THE COURT: Would that fact predispose
6 you towards one side or the other?

7 JUROR NO. 234: I don't know him well
8 enough for it to do that. So, I just know him, he says
9 good morning, hello.

10 THE COURT: Would you be able to set that
11 aside and render your decision in this case based solely
12 upon the evidence as you hear it from the witness stand
13 and take your knowledge of Attorney Gross and set it
14 aside?

15 JUROR NO. 234: Yes.

16 THE COURT: Could you still be a fair and
17 impartial juror even though you know, however remotely,
18 Attorney Gross?

19 JUROR NO. 234: Yes.

20 THE COURT: You may be seated. Thank
21 you.

22 Anyone else?

23 (No response.)

24 THE COURT: Okay. Attorney Gross, you
25 may be seated.

1 The Defendant in this case is Kenneth
2 Ashford. Does anybody recognize or know Kenneth
3 Ashford?

4 (No response.)

5 THE COURT: No affirmative responses.

6 I am going to ask Attorney Kobeski the
7 names of any witnesses he might call and see if you
8 recognize any of those names.

9 Attorney Kobeski.

10 ATTORNEY KOBESKI: Thank you, Judge.

11 Does anyone seated here recognize the
12 name John Brenneman? He's a deputy sheriff here in York
13 County.

14 (No response.)

15 ATTORNEY KOBESKI: No affirmative
16 response.

17 Does anyone recognize the name Thomas
18 McCune? Again, he is a corporal with the York County
19 Sheriff's Department.

20 (No response.)

21 ATTORNEY KOBESKI: No affirmative
22 response.

23 Ciprian Igwe, again, he is a deputy
24 sheriff here in York, does anyone recognize that name?

25 (No response.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ATTORNEY KOBESKI: No affirmative

response.

Finally, Corporal Shawn Brady, does

anybody know or recognize Shawn Brady?

(No response.)

ATTORNEY KOBESKI: No affirmative

response.

Thank you, Your Honor.

THE COURT: Okay. Attorney Gross. What

I would like to do for Attorney Gross is ask if there

are any individuals that he would like to identify for

the jury. But, I want to refresh your recollection,

remember, the defense is under no obligation to call any

witnesses. These are witnesses that they might call

just out of an abundance of caution to see whether or

not you recognize those names.

ATTORNEY GROSS: Your Honor, the only

witness I may be calling for our case would be Eloise

White, Mr. Ashford's mother, standing right now.

THE COURT: Does anybody recognize her?

(No response.)

THE COURT: No affirmative responses.

Go ahead.

ATTORNEY GROSS: And, Your Honor, Justin

Bortner, B-o-r-t-n-e-r. He resides in York City.

1 Justin Bortner.

2 THE COURT: Does anyone recognize that
3 name?

4 (No response.)

5 THE COURT: No. Okay. No affirmative
6 responses.

7 I don't recognize any individuals. Does
8 anyone recognize me?

9 JUROR NO. 64: (Indicating)

10 THE COURT: Yes, ma'am. Your juror
11 number?

12 JUROR NO. 64: 64.

13 THE COURT: Okay.

14 JUROR NO. 64: I worked with Natalie at
15 Limited II.

16 THE COURT: Quite some time ago.

17 JUROR NO. 64: Yes.

18 THE COURT: All right. Natalie would be
19 my wife. Did she tell you any bad things about me?

20 JUROR NO. 64: No.

21 THE COURT: Surprising. Okay. Would
22 that fact predispose you towards one side or the other?

23 JUROR NO. 64: No.

24 THE COURT: Would you be able to set it
25 aside and render a decision in this case based solely

1 upon the evidence you hear from the witness stand?

2 JUROR NO. 64: Yes.

3 THE COURT: Could you be fair and
4 impartial?

5 JUROR NO. 64: Yes.

6 THE COURT: Thank you.

7 JUROR NO. 257: (Indicating)

8 THE COURT: Sir, juror number again,
9 please?

10 JUROR NO. 257: 257.

11 THE COURT: Okay.

12 JUROR NO. 257: I was trying to think of
13 the name John Brenneman where it came from, but I am
14 reading a book on the history of Rose Rhoades right now
15 and I don't remember what context it was, but --

16 THE COURT: You recognize the name John
17 Brenneman from that?

18 JUROR NO. 257: A lot of different
19 Brennemens.

20 THE COURT: That's a big York County
21 name.

22 Do you know anything more, Attorney
23 Kobeski?

24 JUROR NO. 257: I can't recall --

25 THE COURT: You don't know other than

1 reading?

2 JUROR NO. 257: Other than reading
3 property owners' history.

4 THE COURT: Other than that, there is
5 nothing that comes to mind?

6 JUROR NO. 257: Right.

7 THE COURT: Let's assume for the sake of
8 argument it is the same Brenneman you would have read
9 about. would you be able to set that aside and render a
10 decision based solely upon the evidence that you hear in
11 this case?

12 JUROR NO. 257: Absolutely.

13 THE COURT: Could you be fair and
14 impartial?

15 JUROR NO. 257: Yes. Absolutely.

16 THE COURT: Ladies and gentlemen, have
17 you or any member of your family or any close friends
18 been the victim of any crime or have you been present
19 when any crime was committed? Okay. We will have to go
20 down the row.

21 Yes, ma'am. My far left.

22 JUROR NO. 144: My son was mugged at
23 Cobblestones restaurant in September of '08.

24 THE COURT: Your juror number?

25 JUROR NO. 144: 144.

1 THE COURT: Would that fact predispose
2 you toward one side or the other?

3 JUROR NO. 144: No.

4 THE COURT: Could you set it aside and
5 render a decision in this case based solely upon the
6 evidence you hear from the witness stand?

7 JUROR NO. 144: Yes.

8 THE COURT: Could you be fair and
9 impartial?

10 JUROR NO. 144: Yes.

11 THE COURT: Thank you very much. Okay.
12 Yes, ma'am, juror number?

13 JUROR NO. 254: 254.

14 THE COURT: Okay.

15 JUROR NO. 254: I witnessed a shooting
16 when I was walking down from my law office to the
17 parking garage when I used to work in town several years
18 ago. Plus, my brother's house had been robbed.

19 THE COURT: Would that fact predispose
20 you toward one side or the other?

21 JUROR NO. 254: No.

22 THE COURT: Could you set that aside and
23 render a decision in this case based solely upon the
24 evidence you hear from the witness stand?

25 JUROR NO. 254: Yes.

1 THE COURT: Could you be fair and
2 impartial?

3 JUROR NO. 254: Yes.

4 THE COURT: Thank you very much.
5 Anyone else in that row? Your juror
6 number?

7 JUROR NO. 284: 284. I was working at a
8 bank and it got robbed while I was working.

9 THE COURT: So, you were actually a
10 witness to the robbery. Is that correct?

11 JUROR NO. 284: Yes.

12 THE COURT: Would that predispose you
13 towards one side or the other?

14 JUROR NO. 284: No.

15 THE COURT: Could you set it aside and
16 render your decision in this case based solely upon the
17 evidence as you hear it from the witness stand?

18 JUROR NO. 284: Yes.

19 THE COURT: Could you be fair and
20 impartial?

21 JUROR NO. 284: Yes.

22 THE COURT: Juror number?

23 JUROR NO. 284: 284.

24 THE COURT: Thank you very much.
25 Anyone else in that row?

1 JUROR NO. 190: 190.

2 THE COURT: Okay.

3 JUROR NO. 190: My house was broken into
4 and robbed. And I also had a stalker years ago.

5 THE COURT: Would that fact predispose
6 you towards one side or the other?

7 JUROR NO. 190: No.

8 THE COURT: Could you set that aside and
9 render your decision in this case based solely upon the
10 evidence as you hear it from the witness stand?

11 JUROR NO. 190: Yes, sir.

12 THE COURT: Could you be fair and
13 impartial?

14 JUROR NO. 190: Yes, sir.

15 THE COURT: Okay. Second row. Ma'am, I
16 missed you juror number.

17 JUROR NO. 137: 137. I am not sure if
18 this pertains to this, but we have a business in Spry
19 and we had a car stolen from the lot, things like that.

20 THE COURT: So, you have a car business
21 and one of the cars was stolen?

22 JUROR NO. 137: Yes.

23 THE COURT: Would that fact predispose
24 you towards one side or the other?

25 JUROR NO. 137: No.

1 THE COURT: Could you set that aside and
2 render your decision in this case based solely upon the
3 evidence as you hear it from the witness stand?

4 JUROR NO. 137: Yes.

5 THE COURT: Could you be fair and
6 impartial?

7 JUROR NO. 137: Sure.

8 THE COURT: Second row. Okay. Juror
9 number?

10 JUROR NO. 64: 64. My daughter's car was
11 vandalized.

12 THE COURT: Okay. Would that fact
13 predispose you towards one side or the other?

14 JUROR NO. 64: No.

15 THE COURT: Could you set that aside and
16 render a decision in this case based solely upon the
17 evidence as you hear it from the witness stand?

18 JUROR NO. 64: Yes.

19 THE COURT: Could you be fair and
20 impartial?

21 JUROR NO. 64: Yes.

22 THE COURT: Thank you very much.

23 Yes, sir, your juror number, please.

24 JUROR NO. 47: 47.

25 THE COURT: Okay.

1 JUROR NO. 47: Many years ago, I
2 witnessed a purse snatching and chased the perpetrator.
3 Then also, years -- around the same time this many years
4 ago as well, I was set upon by three people and
5 basically received a pretty thorough thrashing. I think
6 those are all pretty quite long ago.

7 THE COURT: would those incidents
8 predispose you toward one side or the other?

9 JUROR NO. 47: No.

10 THE COURT: Could you set them aside and
11 render your decision in this case based solely upon the
12 evidence as you hear it from the witness stand?

13 JUROR NO. 47: Yes.

14 THE COURT: Could you be fair and
15 impartial?

16 JUROR NO. 47: Yes.

17 THE COURT: Thank you.

18 Anyone else in that row? Third row.
19 Yes, ma'am, far left, my far left.

20 JUROR NO. 204: 204. Back about eight
21 years ago, a guy tried to rob me and it made me very
22 angry, so I kind of backed up. I said to him, You are
23 not going to get my money. And he didn't. He ended up
24 running.

25 THE COURT: would that incident

1 predispose you towards one side or the other?

2 JUROR NO. 204: No.

3 THE COURT: Could you set it aside and
4 render a decision in this case based solely upon the
5 evidence as you hear it from the witness stand?

6 JUROR NO. 204: Yes.

7 THE COURT: Could you be fair and
8 impartial?

9 JUROR NO. 204: Yes.

10 THE COURT: Yes, ma'am.

11 JUROR NO. 12: Juror Number 12. This
12 came up because that lady reminded me, my brother was
13 mugged probably about three years ago.

14 THE COURT: Would that affect or
15 predispose you towards one side or the other?

16 JUROR NO. 12: No.

17 THE COURT: Could you set that aside and
18 render your decision in this case based solely upon the
19 evidence as you hear it from the witness stand?

20 JUROR NO. 12: Yes.

21 THE COURT: Could you be fair and
22 impartial?

23 JUROR NO. 12: Yes.

24 THE COURT: Thank you. Anyone else in
25 that row? No.

1 How about the fourth row? Yes, sir, your
2 juror number, please.

3 JUROR NO. 167: 167.

4 THE COURT: Okay.

5 JUROR NO. 167: My parents and my in-laws
6 probably over a time spanning 25 years had their homes
7 burglarized.

8 THE COURT: would that fact predispose
9 you towards one side or the other?

10 JUROR NO. 167: No.

11 THE COURT: would you be able to set that
12 aside and render your decision in this case based solely
13 upon the evidence as you hear it from the witness stand?

14 JUROR NO. 167: Yes.

15 THE COURT: Could you be fair and
16 impartial?

17 JUROR NO. 167: Yes.

18 THE COURT: All right. Okay. Anyone
19 else in that row? I thought I saw another.

20 Your juror number, please.

21 JUROR NO. 242: 242.

22 THE COURT: Okay.

23 JUROR NO. 242: I was assaulted quite a
24 few years ago and my purse was stolen. And that was a
25 while ago.

1 THE COURT: Was that one episode or two?

2 JUROR NO. 242: One.

3 THE COURT: So, you were assaulted while
4 your purse was being stolen?

5 JUROR NO. 242: Correct.

6 THE COURT: Would that affect or
7 predispose you towards one side or the other?

8 JUROR NO. 242: No.

9 THE COURT: Could you set that aside and
10 render your decision in this case based solely upon the
11 evidence as you hear it from the witness stand?

12 JUROR NO. 242: Yes.

13 THE COURT: Could you be fair and
14 impartial?

15 JUROR NO. 242: Yes.

16 THE COURT: Thank you.

17 Your juror number?

18 JUROR NO. 53: 53.

19 THE COURT: Okay.

20 JUROR NO. 53: Had my car broken into.

21 THE COURT: Would that predispose you
22 toward one side or the other?

23 JUROR NO. 53: No, sir.

24 THE COURT: Could you set that aside and
25 render your decision in this case based solely upon the

1 evidence as you hear it from the witness stand?

2 JUROR NO. 53: Yes.

3 THE COURT: Could you be fair and
4 impartial?

5 JUROR NO. 53: Yes, sir.

6 THE COURT: Anyone else in that row?
7 Juror number, again.

8 JUROR NO. 257: 257. Three incidents,
9 Your Honor. When I was a child, probably eight or ten
10 years old, I was downtown with my mother, heard
11 gunshots, and witnessed someone following the police
12 out, apparently. I think I saw them leave the place and
13 someone was shot and killed. So, I gave my mother the
14 tag number and eventually gave that to the police, that
15 type of thing.

16 THE COURT: Okay.

17 JUROR NO. 257: Then quite some years
18 ago, I was held up at gunpoint while working at a place.

19 And I witnessed a man taking a very bad
20 beating in front of the place, called and met with the
21 police.

22 THE COURT: Your voice is trailing off.

23 JUROR NO. 257: I was held up at gunpoint
24 while I worked at a place.

25 And then some time after that, I

1 witnessed somebody beaten very badly in front of the
2 place. The police came and all that.

3 And I guess about 27 years ago, I was --
4 someone came to me and said that this girl had been
5 beaten and grabbed at the store front. I went out with
6 my friend. The guy pulled a gun on me. That got
7 complex. I don't know if I should expand upon that.

8 THE COURT: No. That's fine. Would
9 those facts predispose you toward one side or the other?

10 JUROR NO. 257: Well, I guess when it got
11 complex, it was more involved.

12 THE COURT: Then my question is, however
13 involved, would it predispose you towards one side or
14 the other?

15 JUROR NO. 257: No.

16 THE COURT: Would you be able to set it
17 aside and render your decision in this case based solely
18 upon the evidence as you hear it from the witness stand?

19 JUROR NO. 257: Yes.

20 THE COURT: Could you be fair and
21 impartial?

22 JUROR NO. 257: Yes.

23 THE COURT: Okay. Thank you.

24 Anyone else? No. Yes, ma'am. Juror
25 number, please.

1 JUROR NO. 159: 159. May I speak

2 privately?

3 THE COURT: Sure.

4 * * *

5 (The following discussion occurred at
6 sidebar:)

7 THE COURT: Ma'am, step forward, please.

8 JUROR NO. 159: I have been the victim of
9 sexual assault.

10 THE COURT: How long ago was this?

11 JUROR NO. 159: About 15 years.

12 THE COURT: Okay. Would that fact --
13 obviously, it doesn't apply whatsoever to the charge
14 that the Defendant has been charged with. Would that
15 predispose you towards one side or the other?

16 JUROR NO. 159: No.

17 THE COURT: Would you be able to set that
18 aside and render your decision in this case based solely
19 upon the evidence that you hear from the witness stand?

20 JUROR NO. 159: Yes.

21 THE COURT: Could you be fair and
22 impartial?

23 JUROR NO. 159: Yes.

24 THE COURT: Okay. Do you have any
25 questions?

1

ATTORNEY GROSS: No, I have none.

2

THE COURT: Do you have any questions?

3

ATTORNEY KOBESKI: No.

4

THE COURT: Thank you very much, ma'am.

5

(The discussion at sidebar was

6

concluded.)

7

* * *

8

THE COURT: Okay. Folks, next question.

9

Have you or any member of your family ever been charged

10

with, arrested for, or been convicted of any crime?

11

Yes, ma'am, your juror number, please.

12

JUROR NO. 284: 284.

13

THE COURT: Okay.

14

JUROR NO. 284: My daughter was.

15

THE COURT: What type of offense?

16

JUROR NO. 284: A misdemeanor.

17

THE COURT: Would that fact predispose

18

you towards one side or the other?

19

JUROR NO. 284: No.

20

THE COURT: Would you be able to set that

21

aside and render your decision in this case based solely

22

upon the evidence that you hear from the witness stand?

23

JUROR NO. 284: Yes.

24

THE COURT: Is that yes?

25

JUROR NO. 284: Yes.

1 THE COURT: You need to be clear for the
2 record. Could you be fair and impartial?

3 JUROR NO. 284: Yes.

4 THE COURT: There was someone else.

5 JUROR NO. 12: 12. DUI.

6 THE COURT: Who?

7 JUROR NO. 12: That was me.

8 THE COURT: Would that fact predispose
9 you towards one side or the other?

10 JUROR NO. 12: No.

11 THE COURT: Would you be able to set that
12 experience aside and render your decision in this case
13 based solely upon the evidence as you hear it from the
14 witness stand?

15 JUROR NO. 12: Yes.

16 THE COURT: Could you be fair and
17 impartial?

18 JUROR NO. 12: Yes.

19 THE COURT: Anyone else? Yes, sir. Your
20 juror number, please.

21 JUROR NO. 52: 52.

22 THE COURT: I am going to need you to
23 speak up.

24 JUROR NO. 52: 52.

25 THE COURT: What was it?

1 JUROR NO. 52: Summary offense.

2 THE COURT: Is that you?

3 JUROR NO. 52: Yes.

4 THE COURT: would that fact predispose
5 you towards one side or the other?

6 JUROR NO. 52: No.

7 THE COURT: Is that yes or no?

8 JUROR NO. 52: No.

9 THE COURT: would you be able to set that
10 aside and render your decision in this case based solely
11 upon the evidence you hear from the witness stand?

12 JUROR NO. 52: Yes.

13 THE COURT: Could you be fair and
14 impartial?

15 JUROR NO. 52: Yes.

16 THE COURT: All right. Yes, your juror
17 number?

18 JUROR NO. 257: 257. This is the other
19 part of that story where I said it got complex. When I
20 tried -- when I went out to help that girl, these two
21 guys -- the man pulled a gun. Then when I went to -- I
22 was leaving on that morning to go testify against them,
23 I was served with a criminal summons where he accused me
24 of malicious destruction of his door, I think it was, or
25 something, which I didn't do. But any way, I had to

1 show up and it was not proessed.

2 THE COURT: So, you didn't have a
3 conviction?

4 JUROR NO. 257: No. It was not proessed.

5 THE COURT: Okay. Would that affect or
6 predispose you towards one side or the other?

7 JUROR NO. 257: Your Honor, it was 27
8 years ago.

9 THE COURT: Could you set that aside and
10 render your decision in this case based solely upon the
11 evidence as you hear it from the witness stand?

12 JUROR NO. 257: Yes.

13 THE COURT: Could you be fair and
14 impartial?

15 JUROR NO. 257: Yes.

16 THE COURT: Thank you. All right, ladies
17 and gentlemen, a few more questions for you. Do any of
18 you have any doubts or reservations about your
19 willingness and ability to follow my instruction that
20 the truthfulness of the testimony of each witness is to
21 be judged by the exact same standard as every other
22 witness? Let me give you an explanation for that.
23 Every witness's truthfulness is to be judged by the
24 exact same standard. No person comes before you with a
25 ticket entitling him or her to be believed.

1 So, let's say, for instance, I will give
2 you an example of it, a member of the cloth of your
3 church, mosque, synagogue, temple, et cetera, comes into
4 court and testifies. You may be inclined because of
5 their affiliation with the church, mosque, temple,
6 synagogue, et cetera, to grant them a little bit of a
7 benefit of the doubt when it comes to assessing their
8 credibility. And again, credibility is just
9 believability. That would be improper, because each
10 witness is to be judged by the exact same standard.

11 So, again, having given you that
12 explanation, does anyone have any doubts or reservations
13 about following my instruction that you should evaluate
14 the testimony of each witness by the exact same standard
15 as you do every other witness?

16 (No response.)

17 THE COURT: No affirmative responses.

18 Thank you.

19 Do any of you have any moral, religious,
20 ethical scruples against passing judgment on the guilt
21 or innocence of the Defendant on the charges made in
22 this case?

23 (No response.)

24 THE COURT: No affirmative response.

25 Do any of you have doubts or reservations

1 about following my instruction that the Defendant is
2 presumed to be innocent until proven guilty beyond a
3 reasonable doubt by the evidence presented in court?

4 (No response.)

5 THE COURT: No affirmative responses.

6 Do any of you have any doubts or
7 reservations about being able to consider the evidence
8 in this case fairly and impartially?

9 (No response.)

10 THE COURT: No affirmative responses.

11 Do any of you have any doubts or
12 reservations about following my instruction that the
13 mere arrest of the Defendant and his mere presence for
14 trial is not to be considered as evidence against him?

15 (No response.)

16 THE COURT: Again, no affirmative
17 responses.

18 Do any of you have doubts or reservations
19 about following my instruction that if the Defendant
20 does not take the witness stand or does not present
21 evidence, that is not to be considered as evidence
22 against him?

23 (No response.)

24 THE COURT: No affirmative responses.

25 Do any of you have any doubts or

1 reservations about your willingness to accept and apply
2 the law as I instruct you?

3 (No response.)

4 THE COURT: No affirmative responses.

5 Do any of you have any fixed opinion
6 about the guilt or innocence of the Defendant on the
7 charges made against him?

8 (No response.)

9 THE COURT: No affirmative responses.

10 And this is kind of a catchall. Do any
11 of you have any reason if you were selected to be a
12 trial juror in this case that you could not give the
13 Defendant and the Commonwealth a fair and impartial
14 trial?

15 Yes, ma'am, your juror number again.

16 JUROR NO. 234: 234. I just want to make
17 a statement on that. When I filled that out, I did put
18 yes because of my workplace. If I did know any of the
19 individuals, I would just deal with them and their
20 identities. I wasn't sure I'd be able to.

21 THE COURT: Let me see you up at sidebar.

22 * * *

23 (The following discussion occurred at
24 sidebar:)

25 THE COURT: where do you work?

1 JUROR NO. 234: The York County Prison.

2 THE COURT: Okay. That's how you know
3 him, from coming down to visit people?

4 ATTORNEY GROSS: I apologize. I didn't
5 recognize you at all.

6 JUROR NO. 234: You probably wouldn't.
7 You guys are in the side rooms when I am coming in and
8 out. I just wanted to let you know that if somebody
9 says something.

10 THE COURT: Do you recognize the
11 Defendant?

12 JUROR NO. 234: I don't think so. We see
13 so many people in the medical department that I am going
14 to say I don't think so right now.

15 THE COURT: You work in the medical
16 department?

17 JUROR NO. 234: Yes.

18 THE COURT: All right. All right. Let's
19 assume for the moment that all of a sudden it dawns on
20 you that maybe I did treat him or something, would you
21 be able to set that aside and render your decision?

22 JUROR NO. 234: With him, yes. Like, for
23 instance, I dealt with a guy -- I am the administrative
24 assistant. I don't do treatment. I dealt with a guy
25 that came in and I had to send him out for medical

1 information. He did nothing. But, being truthful, if
2 it was one of those guys, I would have a hard time.
3 But, I don't believe I recognize this guy.

4 THE COURT: Okay. All right. Do you
5 have any questions?

6 ATTORNEY KOBESKI: No, Your Honor.

7 THE COURT: Do you have any questions?

8 ATTORNEY GROSS: I don't.

9 THE COURT: Thank you very much.

10 (The discussion at sidebar was
11 concluded.)

12 * * *

13 THE COURT: Yes, sir.

14 JUROR NO. 257: One other thing. I
15 remember one thing. My wife was convicted for DUI or
16 DWI many years ago.

17 THE COURT: Would that affect you or
18 predispose you towards one side or the other?

19 JUROR NO. 257: No.

20 THE COURT: Would you be able to set that
21 aside and render your decision based solely upon the
22 evidence that you hear from the witness stand?

23 JUROR NO. 257: Yes, I would.

24 THE COURT: Would you be fair and
25 impartial?

1 JUROR NO. 257: Yes.

2 THE COURT: Yes, ma'am.

3 JUROR NO. 80: 80. And the same thing,
4 it was almost 40 years ago and I was very young, and my
5 sister pled guilty to trespassing in New Jersey. So, I
6 mean, it is a fact, so I have got to tell you. I don't
7 know anything else about the circumstances.

8 THE COURT: would that affect or
9 predispose you towards one side or the other?

10 JUROR NO. 80: Absolutely not.

11 THE COURT: Could you set it aside and
12 render your decision in this case based solely upon the
13 evidence as you hear it from the witness stand?

14 JUROR NO. 80: Yes.

15 THE COURT: Could you be fair and
16 impartial?

17 JUROR NO. 80: Yes.

18 THE COURT: Yes, sir.

19 JUROR NO. 257: Is that just for
20 household members or are you talking any family?

21 THE COURT: It says have you or any
22 member of your family been charged with, arrested for.
23 It depends upon are you thinking about someone that's
24 close enough that you consider them family.

25 JUROR NO. 257: I had a brother with a

1 DUI, also, DWI.

2 THE COURT: Anyone else?

3 JUROR NO. 257: No.

4 THE COURT: Are you sure?

5 JUROR NO. 257: No.

6 THE COURT: Now is the opportunity.

7 JUROR NO. 257: Thank you, sir.

8 THE COURT: Would you be able to set that
9 aside and render your decision in this case based solely
10 upon the evidence as you hear it from the witness stand?

11 JUROR NO. 257: Yes.

12 THE COURT: Could you be fair and
13 impartial?

14 JUROR NO. 257: Yes.

15 THE COURT: All right. Okay. Counsel.
16 Attorney Kobeski.

17 ATTORNEY KOBESKI: May it please the
18 Court, Attorney Gross, ladies and gentlemen. Good
19 morning. I know it is almost afternoon, but for now, I
20 will say good morning.

21 First of all, can everybody hear me okay?

22 THE JURY: Yes.

23 ATTORNEY KOBESKI: If at any point
24 during the voir dire process or if at any point during
25 the trial, if you are selected, you can't hear me or I

1 am speaking too quickly or if I am not speaking loudly
2 enough, raise your hand, as Judge Kelley indicated, and
3 let me know. I will speak up, slow down, whatever I
4 have to do. I just want to make sure everyone can hear.

5 JUROR NO. 64: 64. I am used to speaking
6 back.

7 ATTORNEY KOBESKI: Judge Kelley already
8 introduced me. I'd like to personally introduce myself.
9 My name is Justin Kobeski. I am an Assistant District
10 Attorney here in York County. Basically, it is my job
11 to represent the people of the Commonwealth of
12 Pennsylvania, more specifically, the people of York
13 County.

14 Judge Kelley also alluded to the charges
15 in this case. The Defendant is charged with, I guess
16 you could put it, burglary-related offenses. More
17 specifically, the Defendant is charged with criminal
18 attempt to commit burglary, criminal attempt to commit
19 criminal trespass, possession of an instrument of crime,
20 and finally, he is charged with institutional vandalism.

21 Obviously, during this trial and before
22 each of you deliberate on a verdict, you are going to
23 get more instructions on what the elements of the crimes
24 are. The Judge will instruct you at the end of the
25 trial.

1 Just to give everyone a brief summary so
2 they know what these charges basically mean, first of
3 all, an attempted crime, obviously, is not a completed
4 crime. The person is caught before the crime was
5 completed.

6 Now, with burglary, I know some people
7 indicated they had their homes broken into and they were
8 robbed. In fact, what a burglary is, it is a little
9 different from robbery. A burglary is when someone
10 breaks into a building, whether it is a business or a
11 home, where they don't have permission, they have no
12 authority to be there, and they go in there to commit a
13 crime, vandalize, steal something. So, essentially,
14 that's what a burglary is.

15 Criminal trespass is kind of similar.
16 All that involves is a person breaks into a building
17 when they have no permission to be in there.

18 Possession of an instrument of a crime is
19 essentially just possessing some utensil that's used in
20 the commission of a crime.

21 THE COURT: wait. After she is shown the
22 facilities -- first, take her downstairs and have her
23 excused for the day.

24 (Juror Number 137 excused from the jury
25 panel.)

1 ATTORNEY KOBESKI: Does everyone else
2 feel okay? Again, I apologize. I know some people are
3 looking out of concern for your fellow juror.

4 But real quickly, burglary is when
5 someone breaks into a building that they have no
6 permission to be in and they steal something or
7 vandalize something.

8 Criminal trespass is a person breaks into
9 a building where they have no permission to be there in
10 the first place.

11 And possession of an instrument of a
12 crime, like I said, is just having some type of utensil
13 or instrument, whether it be a legal or an illegal
14 instrument, that's used in the commission of a crime.
15 So, for instance, if someone robs a bank and they have a
16 gun they are possessing, that gun with the commission of
17 the crime, that would be possession of an instrument of
18 a crime.

19 And finally, institutional vandalism is
20 just, for lack of a better word, just damaging either a
21 courthouse, school, a building that's codified in the
22 statute.

23 Again, I just wanted to give everyone a
24 brief summary of all the charges so you know what you
25 are dealing with in this case.

1 Knowing and understanding a little bit
2 about the charges the Defendant is facing, and just
3 knowing that fact alone, would that prevent anybody from
4 being fair and impartial in this case?

5 (No response.)

6 ATTORNEY KOBESKI: No affirmative
7 response.

8 Now, when I was going over my witness
9 list, my potential witnesses I am going to call during
10 this trial, I essentially called, I believe, four
11 people. And they were all members of the York County
12 Sheriff's Department. Does anyone have any affiliation
13 whatsoever with the York County Sheriff's Department,
14 whether they know someone that works there, whether they
15 donate money to the department, or anything aside from
16 that?

17 Ma'am, juror number?

18 JUROR NO. 144: 144.

19 ATTORNEY KOBESKI: Okay.

20 JUROR NO. 144: Sheriff Rich Keueleber.
21 I don't know how to say his last name. The sheriff.

22 ATTORNEY KOBESKI: He works here
23 currently.

24 JUROR NO. 144: Yes.

25 ATTORNEY KOBESKI: Are you friends with

1 him?

2 JUROR NO. 144: No. His son played
3 volleyball with my son.

4 ATTORNEY KOBESKI: Understood. Anyone
5 else that you know of with the department?

6 JUROR NO. 144: Of the Sheriff's
7 Department? No.

8 ATTORNEY KOBESKI: Would that prevent
9 you from being fair and impartial in this case?

10 JUROR NO. 144: No.

11 ATTORNEY KOBESKI: Anyone else in the
12 front row?

13 JUROR NO. 8: Is that also Penn Township?

14 ATTORNEY KOBESKI: York. They work here
15 in the courthouse. They do a lot of calls and runs,
16 things like that. It wouldn't be the township.

17 Anyone else? Juror Number 234?

18 JUROR NO. 234: Yes.

19 ATTORNEY KOBESKI: Do you know a member
20 of the Sheriff's Department?

21 JUROR NO. 234: Yes.

22 ATTORNEY KOBESKI: That's through your
23 job?

24 JUROR NO. 234: Yes.

25 ATTORNEY KOBESKI: So, potentially

1 knowing there are four witnesses with the Sheriff's
2 Department that are going to testify in the trial, would
3 that prevent you from being fair and impartial in this
4 case?

5 JUROR NO. 234: No.

6 ATTORNEY KOBESKI: Anyone else in the
7 second row?

8 What about the third row?

9 Last, but not least, the fourth row?

10 (No response.)

11 ATTORNEY KOBESKI: When I was briefly
12 trying to describe and go over what the Defendant was
13 charged with, two of the crimes I mentioned are
14 attempted crimes, attempted burglary and attempted
15 criminal trespass. Obviously, they involve an attempt.
16 I indicated later the crimes weren't completed. The
17 Defendant was caught before he completed the crimes.
18 Does anyone seated here believe that since the crime
19 wasn't actually completed, it was just attempted, it
20 shouldn't be a crime at all?

21 (No response.)

22 ATTORNEY KOBESKI: No affirmative
23 response.

24 Under Pennsylvania law, an attempted
25 crime is looked at and viewed the same as actually a

1 completed crime. So, would anyone disagree with that
2 premise?

3 (No response.)

4 ATTORNEY KOBESKI: No affirmative
5 response.

6 Now, selecting 12 of you is essentially a
7 guessing game. I will just preface that by saying,
8 everyone can't be selected. There are 12, plus two
9 alternates. If you are not selected, don't hold it
10 against myself or Attorney Gross. Again, it is just a
11 guessing game.

12 Lastly, aside from the lady who already
13 left us, does anyone not want to listen and sit during
14 this trial? It is going to last to the end of today and
15 go into tomorrow. It shouldn't go past tomorrow. For
16 any reason, you don't like the way I comb or don't comb
17 my hair or don't like my suit, it is finally not raining
18 outside and you can be outside, anybody that doesn't
19 want to be here for any reason whatsoever?

20 Ma'am, juror number?

21 JUROR NO. 234: 234. I don't want to sit
22 in a criminal case.

23 ATTORNEY KOBESKI: You'd rather sit in a
24 civil case?

25 JUROR NO. 234: Yes, because of my

1 position and my job.

2 ATTORNEY KOBESKI: Do you think by your
3 position and your job, you don't think you would be able
4 to sit and listen to a criminal case and be fair and
5 impartial?

6 JUROR NO. 234: It's not that -- could I
7 come up to answer this?

8 THE COURT: Do you want to come to
9 sidebar?

10 JUROR NO. 234: Yes, please.

11 * * *

12 (The following discussion occurred at
13 sidebar:)

14 THE COURT: Okay.

15 JUROR NO. 234: I'm sorry. The only
16 reason I didn't want to sit on a criminal case, if they
17 were committed to jail and they are aware of where I
18 work, I have four children that, you know, I worry
19 about. And I don't want them -- I just don't want to be
20 open to whoever they may be. I don't want him to walk
21 into medical and say that's a juror that sat on my case
22 and then have contact.

23 THE COURT: Do either of you have any
24 questions?

25 ATTORNEY KOBESKI: No questions. I

1 appreciate your honesty.

2 ATTORNEY GROSS: I have no questions. I
3 can definitely understand where you are coming from.

4 THE COURT: Thank you.

5 ATTORNEY KOBESKI: Thank you, ma'am.

6 ATTORNEY GROSS: Your Honor, with regard
7 to Juror 24, we have got --

8 THE COURT: Hold on.

9 ATTORNEY GROSS: We don't have a problem
10 with striking for cause.

11 THE COURT: Obviously, for the record,
12 Ruth Ann Keeney was stricken for cause. She had to
13 leave to get sick, I believe. So, we have some extras,
14 which is why I do that. If you are agreeing she should
15 be struck for cause, that's fine. I don't know that she
16 will get the same consideration in every court, but --

17 ATTORNEY KOBESKI: Yes.

18 THE COURT: So, we are going to add two.
19 We are now at Lynn Ann Butterbaugh and Laurine
20 Sobota-Minion as part of our initial panel.

21 ATTORNEY GROSS: I am with you.

22 (The discussion at sidebar was
23 concluded.)

24 * * *

25 ATTORNEY KOBESKI: The burden of proof

1 in a criminal case is a high burden of proof. I must
2 prove that the Defendant is guilty beyond a reasonable
3 doubt of each of the crimes that he has been charged
4 with.

5 Now, you are going to hear beyond a
6 reasonable doubt, that term, during the trial. You are
7 actually going to get the definition at the conclusion
8 of the trial by Judge Kelley. Just keep in mind when
9 you do hear the term beyond a reasonable doubt during
10 the trial and when you are actually deliberating back in
11 the jury room, it does not mean beyond all doubt. It
12 does not mean beyond a mathematical certainty.
13 Obviously, it is not 100 percent, but it is still beyond
14 a reasonable doubt. You will get an instruction as to
15 that before you go back to the jury room.

16 With that being said, I appreciate your
17 patience. I will talk to you guys soon.

18 ATTORNEY GROSS: Thank you.

19 May it please the Court, Attorney
20 Kobeski, ladies and gentlemen of the jury.

21 I have not made anyone sick in the past
22 25 years. I will stand back.

23 In this case, Mr. Kobeski told you a
24 little about what the charges are. That's just the
25 flavor of what we are dealing with throughout.

1 I think it is very interesting he has
2 asked you who might you know as far as the attorneys,
3 the judge, the officers, the witnesses, but does anyone
4 here in the jury panel know one another before you got
5 here today?

6 (No response.)

7 ATTORNEY GROSS: Let the record reflect
8 no response.

9 we do ask that because sometimes exes
10 have ended up on the jury panel. It is fun to watch,
11 because this is the administration of justice.

12 As Attorney Kobeski indicated, this case
13 should be about a day or day and a half. Does anyone
14 have any pressing medical or personal issues that would
15 keep them from being here until roughly tomorrow
16 afternoon?

17 (No response.)

18 ATTORNEY GROSS: Let the record reflect
19 no response.

20 As well, our commercial mediums are
21 flooded with police shows, CSI, Law & Order, A & E. I
22 am going to let you know right now, this is not going to
23 be run like Law & Order. There are no gongs that go off
24 when the major point happens. We don't foresee any
25 stuff going on where you are on the edge of your seat.

1 That being said, here we are not going to have a Law &
2 Order episode in the courtroom.

3 Does anyone here believe that they would
4 not be able to take this seriously just as if they would
5 be a Law & Order type of show just because of the lack
6 of theatrics?

7 (No response.)

8 ATTORNEY GROSS: Let the record reflect
9 no response.

10 As well, Attorney Kelley had asked you
11 certain questions, and told you that the Defendant does
12 not have to take the stand in a criminal case. He is
13 absolutely right under the Constitution.

14 THE COURT: Have you somehow demoted me?

15 ATTORNEY GROSS: What? Did I call you
16 Attorney Kelley?

17 THE COURT: Attorney.

18 ATTORNEY GROSS: Judge Kelley. For so
19 long. For so long. Let the record reflect, it is no
20 indication of how this case is going to go.

21 Judge Kelley is going to tell you about
22 whether the Defendant takes the stand or not. Here is
23 the way I turn it. Does anyone agree with the statement
24 that if a person is innocent of what they are charged
25 with, they are going to get up on the stand and tell?

1 Does anyone here agree with that statement? Be honest.

2 (No response.)

3 ATTORNEY GROSS: Does anyone agree with
4 that statement that if you didn't do anything wrong, get
5 up on the stand and tell us. If you would raise your
6 hand. Ma'am, in the front, your number, please.

7 JUROR NO. 190: 190.

8 ATTORNEY GROSS: Do you agree with that
9 statement, ma'am?

10 JUROR NO. 190: Yes.

11 ATTORNEY GROSS: Second row. And for
12 the record, ma'am, you are Juror Number 234?

13 JUROR NO. 234: Yes.

14 ATTORNEY GROSS: I think we can agree
15 that you don't have to answer any further questions.

16 Anyone else in the second row agree with
17 that statement?

18 Third row? Ma'am, you are?

19 JUROR NO. 204: 204.

20 ATTORNEY GROSS: You agree with the
21 statement if you didn't do anything wrong, get up there
22 and tell us?

23 JUROR NO. 204: No.

24 ATTORNEY GROSS: Sir, on the end.

25 JUROR NO. 52: 52.

1 ATTORNEY GROSS: You as well agree with
2 that statement?

3 JUROR NO. 52: Yes.

4 ATTORNEY GROSS: Fourth row? Anybody
5 agree with that statement that if you did nothing wrong,
6 get up on the stand and tell us?

7 JUROR NO. 80: Juror 80. It makes sense.
8 It doesn't make sense. I am torn on this one.

9 ATTORNEY GROSS: That's why we ask it
10 different ways. I understand that when you fill out
11 these forms, you get into a flow pattern of answering
12 questions. I do understand.

13 As well, because this case does involve
14 charges against Mr. Ashford about attempting to trespass
15 or to break into a structure, those individuals that
16 have spoken to the Court today about crimes of their
17 family about theft, does anyone feel, just knowing what
18 these charges are, you wouldn't be in a position to sit
19 in judgment of Mr. Ashford? Does anyone feel as if they
20 believe they wouldn't be able to do that?

21 (No response.)

22 ATTORNEY GROSS: Let the record reflect
23 no response.

24 And here's a surprise, too. Mr. Ashford
25 is not white. Okay. I know that comes as a shocker

1 seeing him here. He is an African American gentleman.
2 Does anyone here take issue with the fact that Mr.
3 Ashford is, in fact, non-Caucasian, but African
4 American?

5 (No response.)

6 ATTORNEY GROSS: Let the record reflect
7 no response.

8 And as well, everyone here, can you
9 clearly see Mr. Ashford? Stand up. Can everyone
10 clearly see Mr. Ashford?

11 THE JURY: (Affirmative response.)

12 ATTORNEY GROSS: Thank you. Please have
13 a seat.

14 And finally, by the mere fact that Mr.
15 Ashford was arrested, does anyone here agree with the
16 statement that innocent people don't get arrested? Does
17 anyone -- does anyone agree with that statement?

18 Ma'am, your juror number?

19 JUROR NO. 284: 284.

20 ATTORNEY GROSS: To that end, you think
21 that he must have done something?

22 JUROR NO. 284: No. I said I don't
23 believe just because you are arrested you are guilty.

24 ATTORNEY GROSS: Does anyone agree with
25 the statement that you must have done something wrong to

1 get arrested? Does anyone here agree with that
2 statement?

3 (No response.)

4 ATTORNEY GROSS: Let the record reflect
5 no response.

6 Thank you. I appreciate it. And that's
7 the only question I have.

8 THE COURT: Yes, sir.

9 JUROR NO. 257: May I approach?

10 THE COURT: Come on up, counsel.

11 * * *

12 (The following discussion occurred at
13 sidebar:)

14 THE COURT: Yes.

15 JUROR NO. 257: I have a lot of things
16 lately, a lot of things. I have taken something for
17 anxiety and depression. I am sitting there getting
18 pretty anxious. I don't think it is going to affect me,
19 but I am just getting pretty nervous.

20 THE COURT: Are you okay?

21 JUROR NO. 257: Yes, I am okay. I am
22 okay.

23 THE COURT: Do you need me to do
24 something?

25 JUROR NO. 257: No. I think that it's

1 just --

2 THE COURT: All right. You may step
3 away.

4 JUROR NO. 257: Just wanted to make you
5 aware of that.

6 THE COURT: You may return to your seat.

7 (Juror No. 257 returned to his seat with
8 the prospective jury panel.)

9 THE COURT: Okay. Attorney Kobeski.
10 off the record.

11 (The discussion at sidebar was
12 concluded.)

13 * * *

14 THE CLERK: The following people have
15 been selected for the jury panel. As I call your juror
16 number, please take a seat in the jury box. Number 144,
17 Number 159, Number 254, Number 218, Number 25, Number
18 244, Number 279, Number 14, Number 12, Number 187,
19 Number 161, Number 167, Number 53, Number 80.

20 THE COURT: Ladies and gentlemen from the
21 panel, I want to thank you for your service in this
22 case. We will have you return to the Central Jury Room.
23 You will probably break for lunch and you will be
24 available for the afternoon session. Thank you very
25 much.

* * *

(Prospective jury panel left the
courtroom at 12:14 p.m.)

THE COURT: Okay. Ladies and gentlemen,
I am going to release you for lunch right now. I am
going to ask you to return to my jury room at 1:15.
We'll get started promptly at 1:15. We will break a
little early. I have to follow up on surgery I had
done. I have to leave at 2:45. We are not going to
have an extremely long afternoon. I apologize for that.
That's the only appointment I can get.

* * *

(Luncheon recess taken from 12:15 p.m. to
1:15 p.m.)

* * *

AFTER RECESS

* * *

ATTORNEY GROSS: Your Honor, if I may
before the jury comes in. Mr. Ashford's mother, he was
trying to explain things to her, she brought something
to my attention that she wishes to bring to the Court's
attention.

THE COURT: Yes.

MS. WHITE: Sheriff Igwe escorted the
jurors into Subway. That's where I was headed to lunch.

1 I take issue with that because he is escorting them. He
2 is a person --

3 THE COURT: who?

4 MS. WHITE: Igwe, the sheriff, Igwe, the
5 one you asked the jury did they know him.

6 ATTORNEY KOBESKI: He is one of the
7 potential witnesses, Ciprian Igwe, the one who would
8 have the West African accent.

9 THE COURT: what did he do?

10 MS. WHITE: He escorted the jurors into
11 subway.

12 THE COURT: What juror or jurors?

13 MS. WHITE: Yes, the jurors.

14 THE COURT: Do you know which jurors they
15 were?

16 MS. WHITE: I don't know exactly. I
17 can --

18 THE COURT: Were they the people here or
19 the people seated on the jury?

20 MS. WHITE: They were the people that was
21 involved, the whole row.

22 THE COURT: They were not people who were
23 seated on the jury?

24 MS. WHITE: I know the one person that
25 they --

1 THE COURT: Was it the people that were
2 actually selected for the jury, ma'am?

3 MS. WHITE: Yes.

4 THE COURT: That are sitting here in the
5 jury room?

6 MS. WHITE: They were the people that was
7 sitting.

8 THE COURT: Fine. Let's bring the jury
9 in. I cannot pull your teeth out, ma'am.

10 The individual indicated there was no one
11 on the jury panel. It may have been from voir dire.

12 * * *

13 (Jury entered the courtroom at 1:20 p.m.)

14 * * *

15 THE COURT: Folks, if you would remain
16 standing. Everyone else may be seated.

17 You may swear in the jury.

18 * * *

19 (Jury sworn at 1:20 p.m.)

20 * * *

21 THE COURT: Ladies and gentlemen, during
22 the course of the lunch hour, has anyone discussed this
23 case with anyone or has anyone had this case discussed
24 in front of them?

25 THE JURY: No.

1 THE COURT: No affirmative responses.

2 Has anyone been approached by any of the
3 witnesses or individuals who were identified as
4 witnesses in this case?

5 (No response.)

6 THE COURT: How about any of the parties?

7 (No response.)

8 THE COURT: No affirmative response.

9 Okay. Ladies and gentlemen, what I am
10 going to do next, I am going to give you my preliminary
11 instructions for the beginning of trial.

12 Members of the jury, you have been
13 selected to perform one of the most solemn duties of
14 citizenship. You are to sit in judgment upon criminal
15 charges made by the Commonwealth against one of your
16 fellow citizens.

17 The services you render as jurors in this
18 case are as important to the administration of justice
19 as those rendered by me as judge and by the attorneys
20 involved in the case. You should pay very close
21 attention to everything that is said and everything that
22 occurs throughout the trial so that you can faithfully
23 perform your sworn duties as jurors.

24 Let me discuss in a general way what is
25 going to transpire over the next day or so. We are not

1 going to finish today because, as I said, I have to
2 leave early today. But, after I have concluded these
3 instructions, the attorneys are going to give their
4 opening statements. The Commonwealth's attorney,
5 Attorney Kobeski, will go first and defense counsel will
6 go next. Defense counsel may reserve his closing for
7 later.

8 After that unfolds, after the opening
9 statements, the Commonwealth will call any witnesses the
10 Commonwealth wants you to consider during the course of
11 your deliberations. Of course, any witnesses called by
12 the Commonwealth may be cross-examined by defense
13 counsel.

14 After the Commonwealth's case has been
15 completed, defense counsel may, if he elects to do so,
16 introduce any witnesses that he wants you to consider.
17 Although, bear in mind, of course, as I told you on two
18 separate occasions, the Defendant is under no obligation
19 whatsoever to present any evidence or any witnesses, and
20 the Defendant does not need to take the witness stand.
21 Any witnesses called by the defense may be
22 cross-examined by the Commonwealth.

23 At the conclusion of the evidence, the
24 parties will give you their closing statements, followed
25 by my final instructions which will be in the form of

1 describing for you the laws that the Defendant has been
2 charged with violating as well as telling how you are to
3 consider various items of evidence.

4 In addition to these instructions I am
5 giving you right now and the instructions I am going to
6 give you at the conclusion of the trial, I am likely to
7 give you various other instructions during the course of
8 trial. Taken as a whole, they comprise the law to be
9 applied by you during the course of your deliberations.

10 One of the key elements of that law is
11 that a defendant is presumed to be innocent. The mere
12 fact that the Defendant was arrested and is charged with
13 offenses is not any evidence of the Defendant's guilt.
14 It is not the Defendant's burden to prove that he is not
15 guilty. Instead, it is the Commonwealth that always has
16 the burden of proving each and every element of the
17 crimes charged and that the Defendant is guilty of those
18 crimes beyond a reasonable doubt.

19 Although the Commonwealth has the burden
20 of proving that the Defendant is guilty, this does not
21 mean that the Commonwealth must prove its case beyond
22 all doubt or to a mathematical certainty, nor must it
23 demonstrate the complete impossibility of innocence. A
24 reasonable doubt is a doubt that would cause a
25 reasonably careful and prudent person to pause and

hesitate or refrain before acting upon a matter of highest importance in his or her own affairs. A reasonable doubt must fairly arise out of the evidence that was presented or out of the lack of evidence that was presented with regard to some element of each of the crimes charged. A reasonable doubt must be a real doubt. I may not be an imagined doubt, nor may it be a doubt manufactured to avoid carrying out an unpleasant duty.

when you deliberate upon your verdict, you have to rely upon your own recollections of what was said and what occurred here in the courtroom. This is because, based upon the length of the trial, I am not going to have you take any notes. What this does mean is that you must pay very close attention to everything that transpires in front of you so that you can faithfully perform your sworn duty as jurors. If you feel that you have missed something from the testimony, it is best for you to let us know immediately so we can go back and have whatever question was asked or answered repeated for you to your satisfaction.

You should not permit any sympathy you feel for any witnesses or for the victim or the Defendant to divert you from your sworn duty to consider all the evidence fairly and impartially when

1 deliberating upon your verdict.

2 As I said to you previously, you are the
3 sole judges of the credibility and weight to be given to
4 all the evidence, including the testimony of the
5 witnesses. You must consider and weigh the testimony of
6 each witness and give it such weight as you believe that
7 it is fairly entitled to receive. Each of you must keep
8 a completely open mind throughout the trial. In the
9 oath you just took, you swore to do just that. We are
10 unable to give you all the evidence in one fell swoop.
11 The evidence must be given to you witness by witness,
12 question by question, and answer by answer. Therefore,
13 you must keep a completely open mind throughout the
14 trial until such time as you have heard all the evidence
15 and I have instructed you on the way and manner you are
16 to consider that evidence.

17 You should not talk about this case
18 amongst yourselves, nor should you talk about this case
19 with anyone else. You can talk about this case amongst
20 yourselves at the conclusion of the trial after I have
21 instructed you on the way and manner to consider the
22 evidence that you have heard.

23 During the trial, as I said, you must not
24 talk about this case with anyone or listen to others
25 talk about this case, including members of your family.

1 There are some persons with whom you must avoid even
2 casual conversations having nothing to do with this
3 case. Those persons are the Defendant, counsel for both
4 sides, the witnesses, and myself.

5 Statements made by counsel do not
6 constitute the evidence. It is the answers that the
7 witnesses give that constitute the evidence to be
8 considered by you. You should not assume a certain set
9 of facts to be true merely because an attorney asked a
10 question that assumes a certain set of facts. Again, it
11 is the answers that are to provide you with the
12 evidence.

13 During the course of the trial, I may
14 question some witnesses myself. The only reason I would
15 do so is because after listening to the evidence unfold
16 for the first time just like you, I believe that there
17 might be some questions that you might have concerning
18 some of the evidence. That is the only reason I would
19 ask any questions. You should not infer from the fact
20 that I might ask questions that I take a position with
21 regard to the guilt or innocence of the Defendant.
22 Indeed, I am duty-bound not to take any position
23 whatsoever with regard to the guilt or innocence of the
24 Defendant.

25 In addition to some of my other duties, I

1 am also to rule on objections during the course of
2 trial. And all an objection is, it is a legal way of an
3 attorney saying, judge, I don't think that the jury
4 should consider this evidence. My job under those
5 circumstances is to consider that. If I sustain an
6 objection, that's another way of me saying, I agree, the
7 jury should not consider the evidence. If, on the other
8 hand, I overrule the objection, that's another way of me
9 saying, I disagree, I believe the jury should hear the
10 evidence. Okay. Sometimes if there is an objection
11 that I sustain, you may have already heard the answer,
12 for instance, if a witness blurts out the answer before
13 I can rule on the objection. Under those circumstances,
14 I may instruct you to disregard the question, disregard
15 the answer. Under those circumstances, literally what
16 you should do is take that information out of your mind,
17 set it aside, not to be considered at all during the
18 course of your deliberations. Okay. Sometimes I can
19 rule on evidence quite quickly. I hear an objection, I
20 hear a response, and I can rule on it. Other times, I
21 might need to hear additional arguments or facts before
22 I can rule properly. Under those circumstances,
23 normally, what I will do is take up matters at sidebar.
24 Of course, I have a white noise machine. Under those
25 circumstances, you should not try to determine why it is

1 at sidebar, nor, of course, should you try to overhear
2 what we are discussing. Obviously, I can't rule on an
3 objection when someone is arguing that you shouldn't
4 consider evidence and then allow them to banter back and
5 forth about the evidence in your presence. That is the
6 reason why we take up matters at sidebar.

7 Okay. In addition, you should not
8 concern yourselves with what the penalty might be at the
9 conclusion of the trial if you find the Defendant
10 guilty. The issue of guilt and the issue of penalty are
11 decided separately. You decide the guilt or innocence
12 of the Defendant. Thereafter, if necessary, I determine
13 what the appropriate sentence might be.

14 That's all the instructions I have for
15 you at this point in time, ladies and gentlemen. We are
16 going to proceed to opening statements.

17 Commonwealth.

18 ATTORNEY KOBESKI: May it please the
19 Court, Attorney Gross. Good afternoon, ladies and
20 gentlemen.

21 If a person looks like they are about to
22 commit a burglary, and if a person is acting like they
23 are about to commit a burglary, then I submit to each of
24 you that that person is, in fact, about to commit a
25 burglary.

1 Now, the testimony during the trial will
2 show that on March 17, 2008, that man, the Defendant,
3 was here at this very building. Now, it was a Monday
4 morning, but it was not during normal, typical business
5 hours. And the Defendant was certainly not here for
6 jury duty. What you are going to hear is that it was
7 3:00 in the morning. The Defendant was dressed in all
8 dark clothing. He had a black knit cap on, black
9 gloves, a dark or black hooded sweatshirt top, and he
10 had dark jeans on. And you are going to hear that he
11 was in the back of this courthouse. You will hear a
12 description from the sheriffs of what the back of the
13 courthouse looks like. You may have even seen it when
14 you walked in here. But nonetheless, the Defendant was
15 back there dressed all in black 3:00 in the morning.

16 The testimony will show that the
17 Defendant was looking through the windows near the back
18 doors of the courthouse, and then the Defendant pulled
19 out a screwdriver. The Defendant proceeded to put the
20 screwdriver in between the crevices of one of the back
21 doors of the courthouse and started to pry it open. He
22 got on his knees. He was even successful in opening the
23 door a little bit, the bottom of the door at least.

24 Now, how do we know all this happened?
25 First of all, most of it is on video. Not surprisingly,

1 there is a video surveillance system in place here in
2 the courthouse. It is supposed to be at least a secure
3 location, although it wasn't on that evening.

4 And number two, Deputy Sheriff John
5 Brenneman of the York County Sheriff's Department saw
6 the Defendant doing this the entire time on the video
7 live as it was happening.

8 Corporal Shawn Brady, also of the
9 Sheriff's Department, he even went around to the back
10 doors of the courthouse and caught that man red-handed.

11 Now, you are going to hear that he was
12 taken into custody, some evidence was collected, a
13 screwdriver. And you are going to hear all of this.

14 Now, I am confident that after hearing
15 all the testimony and looking at all the evidence which
16 will occur today and tomorrow, that each of you will be
17 convinced, not only convinced, but you will be convinced
18 beyond a reasonable doubt that this man, the Defendant,
19 damaged the back doors of this courthouse with a
20 screwdriver. That will be institutional vandalism.
21 That the Defendant had in his possession that
22 screwdriver and used it in a criminal endeavor trying to
23 break open the door. And that's possession of an
24 instrument of a crime. That the Defendant attempted to
25 break into this very courthouse when he had no

1 permission to do so. That will be the attempted
2 criminal trespass. And I am confident that the evidence
3 will also show that when the Defendant was trying to pry
4 open the back door of this courthouse, he had the
5 intent, he was planning on committing a crime once he
6 got inside. That will be the attempted burglary. Those
7 are the four charges that the Defendant is charged with
8 for your consideration.

9 Now, members of the jury, actions speak
10 much louder than words. The Defendant's actions on
11 March 17 of 2008 are undeniable. And once everything is
12 said and done, I am going to ask each of you to return a
13 verdict of guilty on all offenses.

14 Thank you.

15 THE COURT: Counsel, do you wish to open
16 at this time?

17 ATTORNEY GROSS: I do, Your Honor.

18 May it please the Court, Attorney
19 Kobeski, ladies and gentlemen of the jury. I don't like
20 to say this, but I agree with Attorney Kobeski on
21 certain points. First and foremost, my client, Ken
22 Ashford, he was arrested March 17, 2008, about 3:00 in
23 the morning outside the back of the courthouse.
24 Actually, there is a videotape, VHS, antiquated, but it
25 shows the story--my client being ordered to get down on

1 the ground and he is placed under arrest. So, you are
2 probably thinking to yourself, okay, then why are we
3 having this trial.

4 You are also going to see evidence on the
5 DVD depicting a gentleman with a black hooded
6 sweatshirt, pair of jeans and gloves pulling on the back
7 door of the courthouse. You are also going to see
8 someone fussing around the bottom of the door of the
9 courthouse. Although you are not going to see that on
10 the VHS, you will be able to see that on the DVD. That
11 way, you will see if the evidence matches the
12 Commonwealth's evidence.

13 You also have evidence that the
14 Commonwealth will submit that my client damaged the back
15 door of the courthouse. Specifically, you will see
16 little marks on the door, two doors that are open and
17 used for bringing in and taking out equipment. It is a
18 loading dock. Big objects going through the doors.
19 Marks occur. Again, keep that in mind, common sense, as
20 you are processing the information in this case.

21 Also, criminal trespass, you will hear
22 evidence from the witnesses of the Commonwealth that
23 they have cameras that pan the rear of the courthouse,
24 around the back, the front, and the sides, and they keep
25 track, because there are people that would walk through

1 the back of the courthouse and go through the recycling
2 bins, garbage, what have you, throughout all hours of
3 the evening. And when you look at that, you will see
4 that other people are out and about in the back area of
5 the courthouse. People walk through, cut through from
6 George Street and Philadelphia. We are on George Street
7 and Philadelphia runs to our right, again, depending on
8 where you are looking. Also, you will hear evidence
9 that it is not uncommon for people walking down the
10 alleyways to cut through to go from place to place in
11 the city, nor is it uncommon for folks to go out at this
12 time of the evening.

13 what this case comes down to is not the
14 arrest of Mr. Ashford, but a few shots on that DVD and
15 you will see a man looking up at the camera, which is
16 purported to be right above the loading dock area in the
17 back of the courthouse, and you will see a face. And
18 that face, the Commonwealth is going to tell you that it
19 is this gentleman, my client, Kenneth Ashford. But, the
20 picture you see is going to be somebody much, much
21 lighter complected. I am not going to argue about that
22 now. Just roll the film. That's all I ask. Take a
23 look and see if it is possible that individual could be
24 Mr. Ken Ashford. And use your common sense.

25 Then after the evidence is presented, I

1 am going to come back before you and ask you to find my
2 client not guilty of attempted burglary, because what's
3 the reason to break into the back of the courthouse
4 where you see garbage cans. And I am not sure what
5 crime you committed in there. As well as attempted
6 criminal trespass. What is he attempting to do to enter
7 into the building even if you think it is him and not
8 somebody else on that film? And also, institutional
9 vandalism, what was broken? It is a door. You are
10 going to see marks on there, dents, nicks, scratches.

11 It is for you to determine whether or not
12 the Commonwealth has met their burden and shown you that
13 my client, Ken Ashford, was the man behind the door and
14 even if he caused any damage.

15 With that being said, I ask that you
16 listen to the evidence as presented to you. Bring your
17 own common sense and experience to the table. Process
18 it. Figure out what makes sense. And I will ask that
19 at the end of the trial when I speak with you that you
20 return a verdict in favor of my client.

21 Thank you.

22 THE COURT: Okay. Attorney Kobeski.

23 ATTORNEY KOBESKI: Your Honor, before I
24 call my first witness, I would move to sequester all
25 defense witnesses.

1 ATTORNEY GROSS: Absolutely.

2 THE COURT: Okay.

3 ATTORNEY KOBESKI: With that being said,
4 we call Deputy John Brenneman.

5 * * *

6 JOHN D. BRENNEMAN,
7 called as a witness on behalf of the Commonwealth,
8 having been duly sworn according to law, testified as
9 follows:

10 * * *

11 DIRECT EXAMINATION

12 BY ATTORNEY KOBESKI:

13 Q. Can you state your name for the record,
14 deputy.

15 A. John D. Brenneman.

16 Q. Sir, how are you employed?

17 A. York County Sheriff's Department.

18 Q. How long have you been involved in law
19 enforcement?

20 A. January 28, 2002, was my hiring date.

21 Q. That was with the York County Sheriff's
22 Department?

23 A. Correct.

24 Q. Deputy, let me draw your attention to March 17
25 of 2008. Do you recall if you were on duty on that

1 date?

2 A. I was.

3 Q. And do you remember what shift you would have
4 been working?

5 A. 11:00 p.m. to 7:30 a.m.

6 Q. What were the nature of your job
7 responsibilities on that date?

8 A. For most of that night, I was in the control
9 room down in the basement. But, it would have been the
10 booking center.

11 Q. Let's back up for a minute and try to get a
12 better handle on that department. Where is the
13 sheriff's headquarters located?

14 A. Sheriff's Office is on the first floor of this
15 building.

16 Q. Of the courthouse?

17 A. Correct.

18 Q. And are there other facilities that the
19 sheriffs have access to in this building?

20 A. The basement is where the booking center is,
21 our holding cells for adults and juveniles.

22 Q. Now, you indicated that on March 17 of 2008,
23 you were in the control room most of the night?

24 A. Correct.

25 Q. What exactly is the control room?

1 A. The control room is more or less the brain of
2 the whole building. It is where all the alarms are, all
3 the monitors that monitor every single camera, the
4 outside cameras. We control doors to the cells, the
5 secure cells. The doors have to be -- you have to push
6 a button to open up the door to get to some of the
7 stairwells.

8 Q. That's in the basement of the courthouse?

9 A. Correct.

10 Q. Now, deputy, aside from yourself, were there
11 any other sheriffs on duty on March 17, 2008?

12 A. Yes.

13 Q. Who were those deputies?

14 A. Corporal Brady, who is sitting next to you,
15 was the supervisor. Deputy Lease, L-e-a-s-e, and Deputy
16 Igwe, I-g-w-e, and myself.

17 Q. So, there were four sheriffs total on duty
18 that evening --

19 A. Correct.

20 Q. -- at least, in the courthouse?

21 A. Probably on duty.

22 Q. Let me ask you this, deputy. Did you observe
23 anything unusual during your shift that evening or early
24 morning?

25 A. Yes.

1 Q. Can you tell the jury exactly what you
2 observed.

3 A. At approximately 3:10 in the morning, Corporal
4 Brady had brought to my attention someone walking around
5 the loading dock at the back of the building by the
6 alley.

7 Q. Now, Corporal Brady alerted you to this. Were
8 you guys in the same room when he did this?

9 A. Correct, in the control room.

10 Q. Were there any other deputies or sheriffs in
11 the control room with yourself and Corporal Brady?

12 A. No.

13 Q. Do you recall prior to Corporal Brady alerting
14 you that something was going on what you guys were doing
15 before that?

16 A. Corporal Brady had just gotten back from doing
17 a building check through town. We own a couple other
18 buildings and he was making the checks on those. And I
19 was in the control room just monitoring the cameras and
20 answering phones.

21 Q. So, I believe you testified it was about 3:10
22 in the morning?

23 A. Um-hum.

24 Q. Do you recall what day of the week this was?

25 A. Since there was only four on, it should have

1 been Sunday night into Monday morning.

2 Q. Now, when Corporal Brady alerted you that
3 something was going on, where did you first look?

4 A. I looked at the one camera. I pulled the
5 camera up on our main monitor. With that camera, we can
6 zoom, pan with the joy stick. And that's what I did. I
7 brought the -- moved the joy stick to where the
8 individual was standing.

9 Q. Is it fair to say you were viewing a monitor?

10 A. Yes.

11 Q. And do you recall how big that display was?

12 A. I want to say it is maybe about a 21-inch
13 monitor.

14 Q. And this particular evening, you were just
15 looking at this one screen at this very moment?

16 A. Yes.

17 Q. Now, you testified that you can pan. What
18 exactly does that mean?

19 A. You can move it left, right, down, up, zoom in
20 closer and make it wider.

21 Q. And you manually controlled this?

22 A. Yes.

23 Q. Now, do you recall where this person was that
24 you were looking at?

25 A. In the corner, right by the gentleman, Ray

1 Torres. There is a space that he was standing looking
2 left and right like he was looking for somebody.

3 Q. Let me ask you this. Is that the front of the
4 building, side, back?

5 A. It is in the back by the loading dock.

6 Q. Do you know, is there an alley or street?

7 A. There is an alley that cuts between us and the
8 restaurant next-door to us.

9 Q. So, nonetheless, it is in the back of the
10 courthouse?

11 A. Correct, on the loading dock.

12 Q. 3:00 in the morning, I am assuming it is dark
13 outside?

14 A. Yes.

15 Q. Do you recall what the lighting conditions
16 were back in this area when you were watching?

17 A. On the pad, it is pretty well lit up. And the
18 alley is lit up. Back where the individual was, it is a
19 little bit darker. There is maybe about a two-foot
20 space between the wall and generator and he was back in
21 around that area.

22 Q. Is it fair to say it wasn't at least pitch
23 black?

24 A. No.

25 Q. When you were observing this individual, could

1 you tell if this person was a male or female?

2 A. Once they got a little closer, I could tell it
3 was a male.

4 Q. How are you able to tell that, deputy?

5 A. Looked like he had a little bit of a mustache.

6 Q. Can you tell as you were watching or observing
7 this, what skin color the individual had?

8 A. At first, I thought it was either a dark
9 Hispanic or light black male.

10 Q. Well, deputy, do you recall what this
11 individual was wearing?

12 A. Blue jeans, a black sweatshirt with a hood,
13 and glasses.

14 Q. Now, this hood that you testified was on the
15 sweatshirt, was it pulled over the head or laying back?

16 A. No, it was pulled over his head.

17 Q. Could you tell if this suspect was wearing a
18 hat at this time?

19 A. I don't recall.

20 Q. Do you know whether or not this individual had
21 on gloves?

22 A. After I saw the video, I am pretty sure that
23 he did have gloves on. But at that moment, I didn't
24 realize it.

25 Q. Now, tell the jury what action or actions you

1 took once you started to watch this person.

2 A. Okay. Corporal Brady and I were both in
3 there. I moved the monitor over. As I said, he was
4 looking left and right as if he was looking for
5 somebody. Then he started walking towards where the
6 Sheriff's Office windows are. And we have our blinds
7 open. And then there is rollable garbage cans along
8 that wall that recyclable items can be put in there,
9 plastic bottles and newspapers and stuff like that.
10 That's where he stopped and looked into the Sheriff's
11 office.

12 Q. Now, is this through a window?

13 A. Yes.

14 Q. You testified the blinds were open?

15 A. The blinds were open, lights were on.

16 Q. It is easy to see in if it is dark outside?

17 A. Yes.

18 Q. What did you observe this suspect do next?

19 A. Well, I thought he was going into the garbage
20 cans to start to look through some of the recycling
21 stuff. We have people that do that. I saw him reach in
22 his pocket and pull something out and start walking
23 toward the back door. That's when -- Corporal Brady
24 already had the car keys in his hand and said he was
25 going to go out and see what this guy was doing.

1 Q. At any point in time, did this suspect or
2 individual go into the garbage cans?

3 A. No.

4 Q. So, I am assuming at this point in time you
5 thought something was up?

6 A. Yes.

7 Q. You testified that this suspect was looking
8 through the blinds through the windows of the Sheriff's
9 Department. Do you recall about how long this
10 individual was doing this for?

11 A. I want to say maybe only about five seconds.

12 Q. You testified the individual looked left and
13 right. Was this before or after he looked in the
14 window?

15 A. That was before when he was back by the
16 generators.

17 Q. You testified the individual reached in his
18 pocket. Did you see what pocket? Was it a coat pocket,
19 pants pocket?

20 A. No. It was the hoodie.

21 Q. Did you see if anything was brought out of the
22 hoodie pocket?

23 A. It appeared to be a long skinny-type tool. I
24 wasn't sure what it was. Later on, I found out it was a
25 screwdriver.

1 Q. when you were observing the video, you weren't
2 certain?

3 A. No. No.

4 Q. You just saw that he pulled something out?

5 A. Correct.

6 Q. Was there anything in the suspect's hands
7 prior to him reaching in his hoodie pocket?

8 A. No.

9 Q. You testified that this suspect was going
10 towards the back doors of the courthouse?

11 A. Correct.

12 Q. What happened next?

13 A. Corporal Brady had the keys, went out of the
14 control room. I started following him with the camera,
15 the individual that we saw out on the loading dock. And
16 then I had to leave about two to three seconds to go
17 push a button so he could go get out through the
18 stairwell, a secure door.

19 Q. Who is this you're referring to?

20 A. I had to push the button for Corporal Brady so
21 he could get out in the garage. When I came back, I
22 continued following the individual at the back door.

23 Q. You mean you were following him with the
24 video?

25 A. With the camera, correct.

1 Q. Do you know where Corporal Brady was going?

2 A. He said he was going to go out and find out
3 what this guy was doing.

4 Q. You said he had car keys. What are these keys
5 to?

6 A. Patrol car.

7 Q. Now, once Corporal Brady left with the car
8 keys and you were observing this suspect on the video,
9 did you have any communications with anyone during this
10 time?

11 A. I kept in communication with Corporal Brady
12 over a radio letting him know what his progress was,
13 what he was doing, prying at the door, mostly the bottom
14 of the door, with the tool.

15 Q. So, I am assuming by your testimony the
16 suspect actually made it to the back doors?

17 A. Yes.

18 Q. What exactly did you see the suspect do once
19 he was at the back doors?

20 A. He kneeled down and with the tool put it in
21 between the two -- it's a double door that had pins in
22 the top and the bottom and a push bar in the center that
23 you can only get out. And he pried at the door with the
24 tool. And towards the end, he did get the bottom part
25 of the door partially open, maybe only a crack, but it

1 was still open. And I was letting Corporal Brady know
2 what the individual was doing.

3 Q. Did you see the suspect taken into custody?

4 A. Yes.

5 Q. How long would you say it was from when you
6 first saw the suspect until he was taken into custody?

7 A. Three minutes, maybe maximum of five. But, it
8 was pretty quick.

9 Q. Now, during this entire incident, deputy, did
10 you see any other persons in the near vicinity of this
11 suspect?

12 A. No.

13 Q. So, there is only one that you saw the entire
14 time?

15 A. Correct.

16 Q. I believe you already testified to this, but
17 did you observe the entire incident?

18 A. Yes.

19 Q. Was this live as it was happening?

20 A. Yes.

21 Q. I believe you testified there was a period of
22 time two to three seconds where you left the cameras?

23 A. Correct.

24 Q. Now, prior to leaving the cameras for those
25 two or three seconds, did you get a good look at the

1 suspect?

2 A. I got a fairly good glimpse of him. There was
3 maybe only just the oval of his face that was shown
4 through the hoodie and then the glasses that were
5 covering the eyes, too.

6 Q. Is it fair to say that most of his face was
7 covered?

8 A. Most of it.

9 Q. And he had a sweatshirt and jeans, so you
10 couldn't see any other part of his body?

11 A. Right.

12 Q. When you came back from two to three seconds
13 letting Corporal Brady out, was it the same person that
14 you saw?

15 A. Yes.

16 Q. Still the same person dressed all in dark
17 clothing?

18 A. Yes.

19 Q. Hoodie over the head?

20 A. Yes.

21 Q. That was the only two to three seconds that
22 you weren't watching this incident?

23 A. Correct.

24 Q. Just to be clear, were there any other times
25 when you had to go do something and take your view away

1 from the camera?

2 A. No. Just that one time.

3 ATTORNEY KOBESKI: Your Honor, may I
4 have a moment, please.

5 THE COURT: Yes.

6 BY ATTORNEY KOBESKI:

7 Q. Deputy, did you collect any evidence in this
8 case?

9 A. Yes. I had evidence provided to me that I
10 collected and packaged.

11 Q. Who provided you evidence?

12 A. Deputy Igwe.

13 Q. And at what point in time did he provide you
14 evidence?

15 A. When he went to the back door, the door was
16 being jammed open by the screwdriver, which is what I
17 found out that it was later on. He picked up the
18 screwdriver and I told him to bring it down to me so we
19 could keep it for evidence.

20 Q. Was this the same morning?

21 A. Yes. It was maybe about five minutes after he
22 was taken into custody.

23 Q. So, Deputy Igwe brought the screwdriver
24 directly to you?

25 A. Correct.

1 Q. what did you do once you received it?

2 A. Packaged it up and sealed it.

3 ATTORNEY KOBESKI: May I approach the
4 witness, please.

5 THE COURT: You may.

6 ATTORNEY KOBESKI: Let the record reflect
7 I am handing the witness what has been marked as
8 Commonwealth's Exhibit Number 4.

9 BY ATTORNEY KOBESKI:

10 Q. Deputy, do you recognize that package?

11 A. Yes, I do.

12 Q. Can you please tell the jury what that package
13 is?

14 A. It is a package containing the screwdriver
15 with my writing on.

16 Q. Did you seal that package?

17 A. Yes, I did.

18 Q. when did you seal that package, sir?

19 A. Right after the charges were done. That day.
20 That day.

21 Q. Is that the -- did you place that red evidence
22 tape over the package?

23 A. Yes, I did.

24 Q. why did you do that?

25 A. well, this is real easy to tear, so if anybody

1 tries to get in it, it will just rip.

2 Q. So, you tape to secure it?

3 A. Correct.

4 Q. Do you recall what you did with that packaged
5 evidence once you taped it up and secured it?

6 A. We have an evidence drop box. It is like an
7 old mailbox that you drop it in. And then the evidence
8 clerk picks it up, signs it in.

9 Q. Is that a secure location, do you know?

10 A. Yes, in our squad room.

11 Q. Is that where the evidence was taken from
12 today to bring to court, from the evidence locker or
13 evidence room?

14 A. I would imagine that's where Corporal Brady
15 got it from.

16 Q. Does it look like it is in the same condition
17 as when you packaged it?

18 A. Yes. Yes. It is my writing on the
19 description and everything.

20 Q. Deputy, can you kindly open the package,
21 please.

22 A. Sure. This one, also?

23 Q. Please.

24 A. This one, this stuff just kind of pulls.

25 Q. Deputy, just for the record, the bag you are

1 about to cut open, did you place the screwdriver in that
2 bag?

3 A. Yes, I did.

4 Q. Can you tell, is that the screwdriver that was
5 collected --

6 A. Correct.

7 Q. -- on the night in question?

8 After the suspect was taken into custody,
9 do you know where -- how that individual was brought in?

10 A. Corporal Brady and Deputy Lease put him in the
11 patrol car and Corporal Brady drove him down to the
12 control center.

13 Q. That's inside the courthouse?

14 A. Correct, Philadelphia Street door.

15 Q. Did you see them bring the individual in?

16 A. I saw him pull in the sally port with the
17 individual.

18 Q. And the individual that you saw in custody,
19 was it the same individual you were observing on the
20 video?

21 A. Yes.

22 ATTORNEY KOBESKI: Your Honor, that's all
23 the questions I have.

24 THE COURT: Cross-examination.

25 ATTORNEY GROSS: Thank you, Your Honor

* * *

CROSS-EXAMINATION

BY ATTORNEY GROSS:

Q. The individual that you saw come to the sally port and into the holding area, you said that was the same one you saw on the video?

A. Yes.

Q. Is that based on the black hoodie and blue jeans that you saw?

A. Correct.

Q. Quite frankly, the face was very hard to make out through the video. Is that correct, sir?

A. Yes.

Q. Sitting here in the courtroom today under oath, can you say that person on that video is, in fact, Mr. Kenneth Ashford just by looking at that video and looking at him?

A. No.

Q. And so, that morning when you were reviewing what purported to be Mr. Ashford outside the back of the courthouse, was that unusual for people to be out in the back alleyway area?

A. Not at all, no. I mean, we have people walking all the time back and forth in the alley.

Q. Myself included. You probably saw myself

1 today?

2 A. Might have.

3 Q. So, you see people out there in the evenings.

4 Correct, sir?

5 A. Yes, but not on the back -- not on our loading
6 dock.

7 Q. And just to give a depiction for the folks
8 that might not be familiar with downtown York, as you
9 are looking out the back of the courthouse at the
10 loading dock area where the door was being pried open,
11 where would you be facing if you looked straight across?

12 A. Okay. Are you talking as if you are at the
13 back door? It would actually be looking west. You look
14 at the generators, the parking garage to the right of
15 that on Market Street, and there is a car repair shop
16 just on the other side of the alley.

17 Q. So, coming at you is an alley that runs east
18 and west?

19 A. Correct.

20 Q. And another one that runs north and south?

21 A. It runs to the bank parking lot and then you
22 have got to make a left or right.

23 Q. Right.

24 A. Right.

25 Q. And people routinely cross throughout that

1 area?

2 A. Yes.

3 Q. And to the best of your knowledge from working
4 there for the last five, six, seven years, is there a
5 sign about no trespassing?

6 A. Yes, sir.

7 Q. When was that posted, do you know?

8 A. No. I would imagine when the building was put
9 up.

10 Q. But, you really don't know?

11 A. No.

12 Q. And is it in that area where people cut
13 through?

14 A. No. It is near the back door.

15 Q. So, that's like no trespassing like in our
16 building?

17 A. In the building or -- I mean, we own the
18 loading dock.

19 Q. But, people cut through there?

20 A. Not the loading dock. You can't be here.

21 Q. You said people have gone through the garbage
22 cans before?

23 A. I have caught one or two through the recycle
24 bins.

25 Q. Are they arrested?

1 A. Usually, once they open the garbage can, it's
2 like you don't want to do that. There is an intercom at
3 the back door.

4 Q. You can spook them?

5 A. Yes.

6 Q. You can use the intercom and scare them?

7 A. Get their attention.

8 Q. Alert them?

9 A. Yes.

10 Q. Sir, you mentioned the gentleman in that video
11 was wearing blue jeans or black jeans?

12 A. Blue jeans.

13 Q. Is that based on your review of the tape or
14 your recollection?

15 A. It was the tape. I knew they were either blue
16 or black. Once I reviewed the tape, it was blue jeans.

17 Q. Is there some inconsistency that you aren't
18 very clear from the tape and your memory?

19 A. Some, right. It was over a year ago.

20 Q. What about the gloves, do you recall saying he
21 wore gloves?

22 A. Once I reviewed the tape, gloves, he had them
23 on. But, I don't recall them live.

24 Q. On that video that you watched live, did you
25 take notice of him looking at the video camera at any

1 point?

2 A. The individual when he was prying the door was
3 looking up, looking at the door trying to figure out why
4 the door wouldn't pop open. That's what I surmise. The
5 bottom was popped a little open, but the top was still
6 locked in.

7 Q. But, the pop of the door is not evident in the
8 DVD, in the video?

9 A. I think it is.

10 Q. And as well, the individual, you said they are
11 down on all fours?

12 A. Hunched down.

13 Q. And were you involved with taking pictures of
14 the purported damage to the door?

15 A. No.

16 Q. Were you involved in collecting or being
17 provided any other evidence from this situation, except
18 for the screwdriver that was --

19 A. Just the screwdriver.

20 Q. So, you weren't aware if the hat was gathered
21 or the hoodie was gathered?

22 A. No. I had no contact with the individual at
23 all except just to see him being brought in.

24 Q. You mentioned you were in control of the video
25 camera?

1 A. Correct.

2 Q. Is that because you took over and had more
3 experience on that than other --

4 A. Before I went to booking, I was down there
5 quite a bit. I know where the alarms are, which cameras
6 are where.

7 Q. And briefly describe for the jury the video
8 camera you are looking at. We know it was a 21-inch
9 screen. Are you able to look into a specific smaller
10 screen and bring it into the larger screen to focus on?

11 A. The way it first happens, the main screen we
12 usually always have on the adult cell block because
13 that's where most of the action goes on. Then there is
14 about ten smaller video monitors that monitor inside the
15 front door and around the building. And that's where we
16 saw it first was that smaller screen. So, once I
17 punched up Camera 109 that I control, that's when I put
18 on the big monitor that you could see better.

19 Q. And from working that area for some time, are
20 you aware if when you would record a video or DVD that
21 the camera number would affix to the recording?

22 A. I don't think it does.

23 Q. And you said there was a short time span, a
24 few seconds, where you had to lose sight of the video to
25 let Mr. -- Corporal Brady out?

1 A. Correct.

2 Q. Also, during that time period when you were
3 scanning on what was purported to be Mr. Ashford, did
4 you look away at all?

5 A. No.

6 Q. Were there areas when you were following him
7 that you were not able to see on the video?

8 A. No.

9 Q. I thought you said there were areas that were
10 dark or blurry?

11 A. When we first saw him, he was back by the
12 generator and it is a little dark back there.

13 Q. So, he went from the generator where it was a
14 little darker towards the light?

15 A. And the back door has a light right over it.

16 Q. And from the door, it was out back to the
17 recycling?

18 A. The generators and recycle bins, which is by
19 the Sheriff's Office, too. Then there is a ramp that
20 comes up to the steps to the back door and then right to
21 the back door. It is almost like an L.

22 Q. But then when Corporal Brady came and arrested
23 Mr. Ashford, he was actually on the other side of the
24 parking lot, was he not?

25 A. Once Corporal Brady got on the scene, the

1 individual that was at the back door got up and started
2 walking down the ramp towards the generator. Corporal
3 Brady went around the back of the patrol car, and you
4 can't hear because I don't have the speakers on there,
5 but he pointed to the ground and the individual kept on
6 walking. Corporal Brady pulled out his expandable baton
7 and pointed to the ground again. That's when the
8 individual went down to the ground.

9 Q. Went down to the ground voluntarily?

10 A. Correct.

11 Q. Not as a result of --

12 A. No.

13 Q. And as well, sir, as you were watching this
14 transpire, did you see the individual with the black
15 hooded sweatshirt on tinker around with the door in the
16 middle section or just the bottom?

17 A. I want to say it was mostly the bottom,
18 because that was the part that was almost open.

19 Q. And as well, the doors that the individual was
20 standing at, is that the doorway where machinery would
21 have been moved in and out of the courthouse and your
22 people would use for access in and out?

23 A. The back door is mostly used by us for
24 deliveries. Now, there is a roll open door that's a
25 little bit further over from there that you can bring

1 bigger pieces of machinery in. It is mainly for
2 deputies, mail delivery, that kind of stuff.

3 Q. The general public is not going through there?

4 A. No.

5 Q. As you walk through that doorway, can you tell
6 me what's just behind that door?

7 A. There is an extra machine for mail, incoming
8 packages.

9 Q. So, it is functional?

10 A. Yes. To the left of that is the mail room.
11 To the left of that is a maintenance -- like a closet
12 where they keep their snow shovels and equipment like
13 that. To the right of the extra machine is the
14 maintenance office itself. And then just to the right
15 of that there is the doors that come out to the atrium.

16 Q. You mean the main part of the courthouse?

17 A. Right.

18 Q. Once you get past those back doors, do you
19 have to have an access card to get to other areas?

20 A. The secure areas, yes. But, once you get
21 through those back doors, you have got more or less free
22 reign of everywhere else the public can go.

23 Q. The public is not allowed --

24 A. Not the back door. But once you get to the
25 atrium, you have access.

1 Q. Do you have to swipe to get from the back door
2 x-ray machine out to the atrium?

3 A. No.

4 Q. Are there any computers, financial records,
5 moneys kept in that locale when you walk in the back
6 door of the courthouse?

7 A. There is a safe when people pay their fines
8 and costs and stuff that we have. It is like a drop
9 safe. You have got a little handle and the money drops
10 into the safe. So, there is a safe back there.

11 Q. Are you able to move that safe?

12 A. I have never tried.

13 Q. Is it thousands of pounds?

14 A. No. It doesn't look that big. It is a foot
15 and a half by about two foot. It is not a big safe.

16 Q. When you are outside looking in, can you see
17 the safe?

18 A. Once you get inside, you can see it.

19 Q. It is not sitting there for the public to see?

20 A. No. It is by the roll door.

21 ATTORNEY GROSS: All right, sir. Thank
22 you. That's all I have.

23 THE COURT: Redirect.

24 * * *

25

REDIRECT EXAMINATION

BY ATTORNEY KOBESKI:

Q. Did you ever lose sight of the suspect on the video?

A. No, except when I opened his doors.

Q. For two or three seconds?

A. Yes. And even then, if you watch the video, he just kind of like gets off to the side of the video. I follow back with the camera to get him centered.

Q. You saw this same suspect taken into custody?

A. Yes.

Q. And you saw the suspect who was in custody brought into the booking area or in around that area?

A. Yes.

Q. That person is, in fact, the Defendant. Correct?

A. We found out later that's who it was.

ATTORNEY GROSS: Objection, Your Honor. Nonresponsive. He can only speak to himself.

THE COURT: Reask the question. Is the person you see in court the person you saw being brought into booking?

THE WITNESS: I couldn't tell, Judge. He had the face more or less covered.

THE COURT: Even while he was being

1 brought into booking?

2 THE WITNESS: Yes.

3 THE COURT: There you go.

4 ATTORNEY KOBESKI: Thank you, Your
5 Honor.

6 BY ATTORNEY KOBESKI:

7 Q. Deputy, when is the courthouse open to the
8 public?

9 A. 8:00 until 4:30. Now, they do have some after
10 hour things with probation and stuff like that.

11 Q. That has to be with permission?

12 A. Correct.

13 Q. That's Monday through Friday?

14 A. Correct.

15 Q. Now, the doors that this suspect appeared to
16 be prying open to try to get in, were they locked at the
17 time in question?

18 A. Those are always locked. The only way to get
19 in through there is with a pass card.

20 Q. Now, you testified earlier, deputy, that this
21 suspect was looking through blinds into the Sheriff's
22 office where the light was on.

23 A. Correct.

24 Q. What would the person see? What was in the
25 office where he was looking?

1 A. All the cubicles, computers, the typewriters.
2 If you walk down the Sheriff's Office, you can see the
3 whole Sheriff's Office. But mainly, computers and
4 personal items on desks.

5 Q. So, like electronics and personal items?

6 A. Yes.

7 ATTORNEY KOBESKI: That's all I have,
8 Judge.

9 THE COURT: Any re-cross?

10 ATTORNEY GROSS: No, Your Honor. Thank
11 you.

12 THE COURT: You may step down. Thank
13 you.

14 Next witness.

15 ATTORNEY KOBESKI: Commonwealth calls
16 Corporal Thomas McCune.

17 * * *

18 THOMAS R. MCCUNE,
19 called as a witness on behalf of the Commonwealth,
20 having been duly sworn according to law,
21 testified as follows:

22 * * *

23 DIRECT EXAMINATION

24 BY ATTORNEY KOBESKI:

25 Q. Could you state your name for the record.

1 A. Yes. Corporal Thomas R. McCune. I am
2 currently employed with the York County Sheriff's
3 office.

4 Q. How long have you been involved in law
5 enforcement?

6 A. Well, I retired from Northern Regional after
7 30 years and I have approximately six years in here with
8 the York County Sheriff's Office.

9 Q. And your title is corporal?

10 A. That's correct.

11 Q. Are you familiar with the video surveillance
12 system here in place in the courthouse?

13 A. Yes, I am.

14 Q. And how are you familiar with it?

15 A. I was working when Berkshire Systems installed
16 the system. I worked with them since -- I guess they
17 just completed the installation and I worked with their
18 contract. I have been watching for the last five years.

19 Q. Did you receive any training relative to the
20 surveillance system?

21 A. Yes. Berkshire did provide training as far as
22 how to operate the cameras, how to operate the monitors,
23 how to back up the systems, that type of thing.

24 Q. I am assuming that was shortly after it was
25 installed?

1 A. Yes.

2 Q. Have there been any modifications or
3 improvements in the monitoring system?

4 A. During the past five and a half years that I
5 have viewed the system, I think we had one camera
6 failure. We replaced the camera. We replaced a few of
7 the monitors that we view. They simply burn out, that
8 type of thing. We have not really enhanced the system.

9 Q. So, a couple of replacements, but no
10 modifications?

11 A. That's correct.

12 Q. Well, can you explain to the jury how this
13 surveillance system operates.

14 A. It works off -- we have approximately between
15 50 to 100 cameras at this building. Every exit and
16 entranceway is recorded to a hard disk. It is a
17 computer hard disk. Those hard disks are what they call
18 a Desa system, which is basically a hard drive and a CD
19 burner. That's manufactured by the Phillips Group.
20 Each of the Desa banks records up to 16 different
21 cameras simultaneously 24 hours a day. They can be
22 modified to run on motion only. Most of our cameras, at
23 least all the ones to the exits and entrances, record 24
24 hours a day, though. They don't stop and they are not
25 on motion. They can record for up to, I'd say, anywhere

1 from two weeks to a month and a half before it starts to
2 overwrite the old data.

3 And in this case, we were using Desa Bank
4 1, which is -- what would happen, these -- most of the
5 cameras that we have are pan/tilt/zoom cameras. In
6 order to operate those, we have like a little console,
7 small console with a joy stick you can rotate the camera
8 360 degrees. You can zoom in with that camera. It has
9 a 10-power optical zoom and then goes to digital zoom
10 after that. Best quality is with the 10-power optical.

11 The other cameras are fixed cameras. You
12 can't do anything with them. They are fixed. As far as
13 the lighting and everything else, that's fixed. You
14 can't do anything with them. Some of those cameras are
15 also backed up 24 hours a day.

16 Q. Let me ask you this, Corporal. I am sure it
17 can get pretty complex. Let's specifically talk about
18 the cameras back near the loading dock area, the
19 generators, back doors to the courthouse.

20 A. Yes.

21 Q. Are those both fixed cameras?

22 A. We are using Cameras 109 and 111. Camera 111
23 is a fixed camera. Camera 109 is a pan/tilt/zoom. It
24 can be controlled by joy stick and control.

25 Q. So, that's both?

1 A. Correct.

2 Q. I might have misunderstood or just didn't
3 understand, are these cameras controlled by computer or
4 by a person manually?

5 A. They are controlled by a person who is
6 operating that joy stick.

7 Q. And is there a delay associated with these
8 cameras? Like, if you are watching the video on a
9 monitor, do you see it live or is there a delay?

10 A. That's live. When we are viewing, it is live.

11 Q. Now, the video footage captured from these
12 cameras, is it preserved in any way?

13 A. Yes.

14 Q. Can you tell me or tell the jury how it is
15 preserved.

16 A. Yes. It goes to -- as I said, we have two
17 groups. We have Desa 1 and Desa 2. Desa banks are
18 based on a hard drive system. It does have a CD burner
19 in to allow us to do a backup or make a copy of a
20 section of video that we want to show later. And these
21 cameras that record 24 hours a day, they keep recording
22 until they get to the end of the hard drive. Then they
23 basically go back and start to overwrite old data. So,
24 it is a constant thing. A lot of the time, like I said,
25 it can be anywhere from two weeks to a month and a half

1 record time. A lot of that depends on out of 16 cameras
2 on there how many are operated 24 hours a day and how
3 much data comes from the cameras that are only operated
4 whenever motion is seen. For example, out on the
5 atrium, you may see a camera up there at nighttime. A
6 lot of times, those are only going to record when there
7 is motion or a change in scenery. So, they are like
8 they are dormant. As soon as light is on or off or
9 there is motion, movement, somebody walks through, it
10 begins to record immediately. Once that picture goes
11 back to a still image again and the camera does not see
12 any more motion, it stops recording. Therefore, it
13 conserves the hard drive space. So, we can actually get
14 more information on the hard drive.

15 Q. So, from what I can take from your testimony,
16 the footage is captured on the hard drive?

17 A. That's correct.

18 Q. Is there any way to transfer from the hard
19 drive to some kind of hard copy, like a disk, tape,
20 something like that?

21 A. Yes, sir, but not from the control room. I
22 have to go to a different location to retrieve that.
23 That comes from the Desa bank, which is housed in
24 another location in the basement.

25 Q. How would you go about doing that, Corporal?

1 A. Basically, burns the information to a CD
2 optical disk. I go back to the room that's equipped
3 with a monitor and the actual Desa bank is there. I put
4 the CD into the CD burner and go through the program,
5 the Desa program, which basically asks you which camera
6 do you want pictures from, what time frame do you want
7 the data retrieved from, and how do you want it
8 retrieved. And typically, it retrieves it from what's
9 known as an AVI file, audio-video file. That's how this
10 was backed up.

11 Q. As long as the footage wasn't erased over the
12 two weeks --

13 A. It is there.

14 Q. -- you can record it and preserve it on a hard
15 copy?

16 A. Absolutely.

17 Q. Is footage ever preserved on VHS or cassette?

18 A. Yes. That's in the control room. That's
19 attached to our primary monitor. The primary monitor
20 allows us to view any camera in the whole complex. I
21 can bring up any camera in the building. It is a
22 19-inch monitor and with the VHS that's hooked to that
23 at any give time, there is a toggle switch, and if I
24 want to get quick video, I can hit the toggle switch and
25 I will get 30 seconds of video without having to touch

1 anything else.

2 Another way to record would be to
3 actually hit the record button on the recorder itself.
4 And then it will continue to record until you run out of
5 tape or until you stop it.

6 Q. So, a person watching the footage live can
7 actually hit a button and it will be preserved VHS
8 cassette?

9 A. Yes, sir.

10 Q. Or you can go in and look at the different
11 cameras, different views and record that on DVD?

12 A. Yes. Anything I can bring up on that monitor
13 I can record at any given time.

14 Q. Is there a difference between footage on the
15 DVD and VHS?

16 A. Yes.

17 Q. Tell the jury what that is.

18 A. DVD, it is automatically going to be an AVI
19 file, commonly referred to as AVI, audio-video
20 interface. Most DVD players play it back -- and it
21 doesn't always play it back in the home-style DVD
22 player. But, it can be viewed on that kind of computer.
23 Just refresh the question.

24 Q. The VHS versus DVD, the difference.

25 A. VHS is played back real time, plays all the

1 frames it is seeing. whereas, our backup system is set
2 up to only record two to three frames per second, which
3 is extremely slow, two to three frames per second.

4 For real video, you would want 29 to 30
5 frames per second. If I want to stop motion and I want
6 to stop high speed, then I want to go even more frames
7 per second. A good example is, the new show that's on,
8 I think, Discovery Channel, it is called Time Warp, they
9 use a high-speed camera that records 400 frames per
10 second. There are projectiles flying through. It all
11 depends on what you want. For our purpose, we only need
12 two, three frames per second. That's taking three
13 frames per second of any given location.

14 Q. Let's talk about the overall quality of this
15 video footage. First of all, is it black and white or
16 in color?

17 A. It is in color.

18 Q. Now, when an individual is watching footage,
19 can they interpret anger or what they are saying in any
20 way whatsoever?

21 A. No, not per se.

22 Q. You said not per se.

23 A. Can a digital image be altered? Yes, it could
24 be, if I had the right programming and had the right
25 expertise. A lot of things in motion pictures is done

1 with computer graphics. Did that event happen? Well,
2 no, it is done by computer graphics. Then you need
3 separate training and special programs to do that. That
4 I am not trained in.

5 Q. Do you know if any sheriffs are trained in
6 that capacity?

7 A. No, sir, I don't believe they are.

8 Q. Let's talk about this particular case,
9 Corporal. Did you have any involvement whatsoever
10 relative to this surveillance footage?

11 A. Not while it was being taken.

12 Q. Did you have any involvement after the night
13 in question or morning in question?

14 A. The following morning, my lieutenant requested
15 that I make a backup copy of the information that was on
16 the Desa bank, Desa 1.

17 Q. You are referring to the DVD copy?

18 A. That's correct.

19 Q. Did you do that?

20 A. Yes, I did, sir.

21 Q. Did you alter the footage that was captured
22 in any way whatsoever?

23 A. To the best of my knowledge, no. For one
24 thing, the program doesn't really allow you to do that.
25 Doesn't have any ability to allow you to. Even if I

1 would try to enhance the brightness of it, I can't do
2 that. I can do it temporarily on a monitor by turning
3 up the image, stopping the frame, turning up the image
4 to brighten it. But, when it actually records that
5 footage, it is not going to record the bright section.
6 It is going to record it as it was recorded. It doesn't
7 let me make any changes to it.

8 Q. Is it fair to say you didn't edit the footage
9 in any way whatsoever?

10 A. That's correct.

11 Q. You didn't enhance the quality of the footage?

12 A. No, I didn't.

13 ATTORNEY KOBESKI: Your Honor, may I
14 approach the witness, please.

15 THE COURT: Yes.

16 ATTORNEY KOBESKI: Let the record
17 reflect I am handing the witness what has been marked as
18 Commonwealth's Exhibit 2.

19 Your Honor, before the witness opens the
20 evidence, there is a stipulation to place between
21 defense counsel and myself as to the chain of custody of
22 the video surveillance.

23 ATTORNEY GROSS: That's correct, Your
24 Honor.

25 THE COURT: Okay.

1 BY ATTORNEY KOBESKI:

2 Q. Corporal, can you please open the package.

3 A. It is empty at this point. Can I cut that
4 with scissors?

5 Q. Oh, yes. We had that problem before. Can you
6 tell the jury what was in that evidence package.

7 A. Yes. One VHS tape, video tape. And this
8 contains -- and this is my -- this is the way I packaged
9 this. I hand stapled it. But, this is the CD.

10 Q. Is it fair to say that the VHS copy would have
11 been recorded on the night in question for the person
12 who was watching the video?

13 A. It would have been, yes, sir. It would have
14 been activated by switch in the control room.

15 ATTORNEY KOBESKI: Your Honor, that's all
16 the questions I have.

17 THE COURT: Cross-examine.

18 ATTORNEY GROSS: Few questions, Your
19 Honor. Thank you.

20 * * *

21 CROSS-EXAMINATION

22 BY ATTORNEY GROSS:

23 Q. Good afternoon, sir.

24 A. Good afternoon.

25 Q. Let me get this straight. The information

1 that you see from the video cameras as it goes to the
2 hard drive, you don't have the ability to change what's
3 being recorded, just to record it to a different media.
4 Is that essentially what you can do?

5 A. Basically, it has to go to that hard drive at
6 the Desa bank. Yes, the camera sees it. That's how --
7 it travels to the Desa bank and records to the hard
8 disk.

9 Q. The VHS time that was created based on what
10 occurred on March 17, 2008, that recording was done by
11 an officer reviewing what was occurring at that moment?

12 A. Yes. The VHS tape, this would have been
13 recorded by an actual person sitting in the control room
14 who is watching something on the monitor and threw the
15 toggle switch or hit the record button, one of two.

16 Q. So, if you are with the toggle switch, you can
17 record as well through that device?

18 A. Yes. The toggle switch is set at 30 seconds.
19 The timing device records, 30 seconds, records again,
20 and hit the switch.

21 Q. 30-second increments?

22 A. Yes.

23 Q. As opposed to record button?

24 A. If you hit the record button on the recorder,
25 that will record indefinitely until it runs out of tape

1 or until you stop it.

2 Q. And two cameras, you mentioned 109 and 111?

3 A. Yes.

4 Q. 111 is a fixed camera directly above the entry
5 doors into the loading dock, from the loading dock into
6 the mail room.

7 A. Camera 111 is a fixed camera, yes.

8 Q. And 109 you said is portable?

9 A. Pan/tilt/zoom. It actually would rotate. I
10 can zoom in with that camera. I can do a lot of
11 different things with it.

12 Q. Where is that mounted?

13 A. That's mounted on the opposite end of the --
14 111 is the one overlooking some doors. 109 is at the
15 opposite end of the loading dock and also shoots across
16 the loading dock. You can actually see anything
17 occurring on the loading dock.

18 Q. You can see all the way around the courthouse?

19 A. Correct.

20 Q. As I recall, we had a rash of break-ins last
21 year and that camera shot all the way around?

22 A. Yes.

23 Q. So, let me ask you. Now, are you the main
24 individual in charge of the cameras? Are you the guy
25 that knows the most?

1 A. If something breaks down, I am basically,
2 being corporal, I am kind of in charge of making sure
3 maintenance is made aware of these issues, because they
4 have contracts with some of these companies to replace
5 equipment if it breaks down.

6 Q. And when you record or are asked to record for
7 court or what have you, do you have the ability to have
8 time elapsed digits on the recordings showing what date
9 and time and exact location of the camera?

10 A. On the video? On the VHS?

11 Q. On the VHS or any other DVD you would be
12 recording on, can you place a date, time and --

13 A. I think that's all built in the format of the
14 program, I believe.

15 Q. So, what you prepare is just the information
16 you record, not time, date, or camera number?

17 A. Right. Unless it is recorded automatically by
18 that program.

19 Q. You also mentioned, sir, that you are not sure
20 if anyone has the ability to tinker with these devices
21 or to modify recordings. Do you recall testifying?

22 A. Yes. Not to my knowledge.

23 Q. Right. By the same token, you are not sure
24 what other individuals can or cannot do?

25 A. I don't know if anybody has a graphics

1 background or not, no.

2 Q. who else has access to the recording of the
3 videos that are recorded in the courthouse?

4 A. whoever would be operating in the control room
5 at the time.

6 Q. And so, whoever is stationed in an area would
7 have access. Correct?

8 A. well, one or two deputies, yes.

9 Q. At a time or overall?

10 A. Each shift, because we are operating 24 hours
11 a day. So, there is -- somebody is always at the
12 control.

13 ATTORNEY GROSS: Thank you, sir. That's
14 all I have.

15 THE COURT: Any redirect?

16 ATTORNEY KOBESKI: I don't believe so,
17 Judge.

18 THE COURT: You may step down.

19 Ladies and gentlemen, I don't think we
20 are going to be able to get another witness. I am going
21 to break early at this point. I am going to ask you to
22 return tomorrow at 9:15 to the same room or the same
23 room you returned to after lunch. My apologies for
24 this.

25 Over the course of the evening hours, do

1 not discuss this matter with anyone, nor should you
2 allow anyone to discuss it in your presence. And I am
3 sure when you get home, your significant others are
4 going to ask were you selected for a jury, what kind of
5 case was it. You can tell them you were selected for a
6 jury. Don't go any further beyond that. Something they
7 are saying spontaneously could affect you. You can say,
8 yes, I was selected for a jury. I will tell you about
9 it after it is all over.

10 Anything else?

11 ATTORNEY KOBESKI: No, Your Honor.

12 ATTORNEY GROSS: One item once the jury
13 leaves.

14 THE COURT: Drive safely, ladies and
15 gentlemen. We'll see you at 9:15.

16 * * *

17 (Jury left the courtroom at 2:35 p.m.)

18 ATTORNEY GROSS: Thanks, Your Honor. I
19 just have a quick matter at 9:00 I am going to take care
20 of with Judge Dorney.

21 Also, is it okay if his mother comes out
22 to see him at the prison and drops off another shirt and
23 slacks?

24 THE COURT: I don't think there is any
25 problem.

1 ATTORNEY GROSS: Sometimes it causes
2 issues if you don't have prior court approval. We
3 thought it was a one-dayer and here we are.

4 THE COURT: The Court hereby indicates
5 that the prison is to allow a new shirt to be dropped
6 off for the Defendant. They haven't seen his pants yet.

7 ATTORNEY GROSS: They haven't.

8 THE COURT: Unless they are underneath
9 his desk, meaning the jurors.

10 ATTORNEY GROSS: I am with you.

11 THE COURT: So, new shirts would be
12 sufficient under the circumstances.

13 Let's deal with the -- I believe, while I
14 have it on my mind, you wish to amend Count Number 1?

15 ATTORNEY KOBESKI: I do, Judge. Count
16 1, criminal attempt burglary, was charged as a felony of
17 the first degree. The Commonwealth would amend that to
18 a felony of the second degree.

19 THE COURT: You have no objection to
20 that?

21 ATTORNEY GROSS: No.

22 THE COURT: We'll allow the amendment of
23 Count Number 1 to a felony of the second degree.

24 ATTORNEY KOBESKI: Count Number 2 we
25 wish to withdraw.

1

THE COURT: Count Number 2 is hereby

2

withdrawn.

3

(Proceedings were adjourned at 2:35 p.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 PROCEEDINGS HELD TUESDAY, MAY 12, 2009

2 * * *

3 THE COURT: Do you want to bring the
4 jury out, please.

5 * * *

6 (Jury entered the courtroom at 9:40 a.m.)

7 * * *

8 THE COURT: Folks, has anyone overheard
9 anything about this case or discussed this case over the
10 evening hours?

11 THE JURY: No.

12 THE COURT: Next witness.

13 ATTORNEY KOBESKI: Commonwealth calls
14 Deputy Ciprian Igwe.

15 * * *

16 CIPRIAN IGWE,
17 called as a witness on behalf of the Commonwealth,
18 having been duly sworn according to law, testified as
19 follows:

20 * * *

21 DIRECT EXAMINATION

22 BY ATTORNEY KOBESKI:

23 Q. Sir, can you state your name and spell it for
24 the record.

25 A. My name is Ciprian Igwe. C-i-p-r-i-a-n,

1 I-g-w-e.

2 Q. And, sir, how are you employed?

3 A. Employed by York County Sheriff's Office.

4 Q. And how long have you been a sheriff?

5 A. Three years and three months.

6 Q. Deputy, do you recall if you were working on
7 March 17 of 2008?

8 A. Yes, I do.

9 Q. And do you remember what hours you were
10 working?

11 A. I work 11:00 p.m. to 7:30 a.m.

12 Q. Now, deputy, did you collect any evidence or
13 any other items on that date relative to this case?

14 A. Yes, I did.

15 Q. And where did you collect these items?

16 A. I collected an eyeglass, a hat, and a
17 screwdriver that was laying between the two doors.

18 Q. Deputy, these items, were they located outside
19 or inside?

20 A. They were located outside.

21 Q. Where relative to the courthouse?

22 A. That was at the back door/loading dock area.

23 Q. Do you remember what time you went out in this
24 vicinity near the back doors?

25 A. Around 3:00, 3:13 or 3:15 a.m.

1 Q. Now, when you got out back, deputy, did you
2 see any other people outside?

3 A. Yes, I did.

4 Q. Can you tell the jury who you saw?

5 A. I saw Corporal Brady and Deputy Lease.

6 Q. So, there was two deputies out there?

7 A. Yes. And an individual who I don't know his
8 name at that time.

9 Q. And this other individual, aside from the two
10 sheriffs, how was he positioned when you went outside?

11 A. When I went outside, I saw Corporal Brady give
12 the individual a command to drop on the ground and he
13 did.

14 Q. Did you observe Corporal Brady take this
15 individual into custody?

16 A. Yes, I did.

17 Q. Now, once the individual was taken into
18 custody, I am assuming he was taken away from the scene?

19 A. Yes. When they took him into custody, they
20 placed him into the sheriff's car and drove him to the
21 booking area.

22 Q. Now, is it at this point when you collected
23 these items that you were talking about?

24 A. Yes, that was the time I collected all those
25 items.

1 Q. After the person was already in custody?

2 A. Yes.

3 Q. Now, you testified or you began to testify you
4 collected a hat and some glasses, I believe?

5 A. Yes, eyeglasses, yes.

6 Q. Where exactly did you find those items and how
7 did you find them?

8 A. When Corporal Brady asked him to drop on the
9 ground, he did. I guess his eyeglasses fell off at that
10 same place. That's where I collected the eyeglasses and
11 the hat. Then I went towards the door where I found the
12 screwdriver.

13 Q. So, the eyeglasses and hat were in the same
14 place as the person was taken into custody?

15 A. That's true.

16 Q. Now, you said you collected a screwdriver from
17 the doors. What doors were you talking about?

18 A. The back door that leads to the loading dock
19 area.

20 Q. Now, exactly how did you find the screwdriver?

21 A. The screwdriver was laying between the two
22 doors. It has two doors just like this one here. The
23 screwdriver was just laying between the two doors.

24 Q. Was it in between the doors or was it on the
25 ground?

1 A. Just on the ground between the two doors
2 cracked open a little bit.

3 Q. What did you do with the screwdriver once you
4 collected it?

5 A. When I collected it, I gave it to Deputy John
6 Brenneman.

7 Q. Now, the screwdriver that's in front of you
8 marked Commonwealth's Exhibit 4, is that the same
9 screwdriver that you collected that night or that
10 morning, I should say?

11 A. Yes.

12 ATTORNEY KOBESKI: Your Honor, that's
13 all I have.

14 THE COURT: Cross-examination.

15 ATTORNEY GROSS: Thank you.

16 * * *

17 CROSS-EXAMINATION

18 BY ATTORNEY GROSS:

19 Q. Good morning, sir.

20 A. Good morning.

21 Q. This screwdriver that you retrieved from the
22 doors, was it wedged between the bottom of the doors or
23 underneath the doors?

24 A. It was wedged between underneath the doors.

25 Q. So, it was on top -- it was between the ground

1 and the door?

2 A. Yes.

3 Q. As opposed to between the two doors. So, it
4 was on the ground?

5 A. Yes. On the ground -- the two doors just like
6 this here, right here (Indicating).

7 Q. Two doors together, underneath was the
8 screwdriver?

9 A. Yes.

10 Q. How far away was the gentleman who was placed
11 under arrest from where the screwdriver was found?

12 A. About 20 feet.

13 Q. And you were not involved, were you, with
14 monitoring the individual around the back of the
15 courthouse? You weren't watching this individual
16 walking around, were you?

17 A. No.

18 Q. And do you recall what type of glasses you
19 found near the individual that was arrested?

20 A. That was a white eyeglass.

21 Q. white eyeglass?

22 A. Yes.

23 Q. Like a white-rimmed eyeglass?

24 A. All I know is the glass itself was white. I
25 don't know whether it was prescription glass or not. I

1 am not sure.

2 Q. Do they look similar to the eyeglasses you are
3 wearing now?

4 A. I would say, yes.

5 Q. So, they were square framed?

6 A. The shape of the eyeglass, I don't think
7 you --

8 Q. But, the color, like on the sides and around
9 the rim, was it a darker color like yours?

10 A. I don't recall the color.

11 ATTORNEY GROSS: Thank you, sir. That's
12 all I have.

13 ATTORNEY KOBESKI: Nothing additional,
14 Judge.

15 THE COURT: You may step down. Thank
16 you.

17 ATTORNEY KOBESKI: May this witness be
18 excused?

19 THE COURT: Yes.

20 ATTORNEY GROSS: No objection, Your
21 Honor.

22 ATTORNEY KOBESKI: The Commonwealth
23 would like to recall Deputy John Brenneman.

24 * * *

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JOHN D. BRENNEMAN,

recalled as a witness on behalf of the Commonwealth,
having previously been duly sworn according to law,
testified as follows:

* * *

DIRECT EXAMINATION

BY ATTORNEY KOBESKI:

Q. Now, deputy, just to clarify some things from
yesterday. You testified that you observed this entire
incident on the surveillance. Correct?

A. Correct.

Q. Did you record what you were watching?

A. On the VHS, yes. The other cameras
automatically record.

Q. Now, from what we learned yesterday after you
testified, you can either record by pushing a button or
controlling a toggle switch?

A. For the VHS, yes.

Q. Do you recall which one of those two ways you
recorded?

A. The toggle switch.

Q. So, that wouldn't be a straight through, it
would be like 30-second intervals?

A. Approximately 30 seconds. And then it would
stop and I'd have to hit it again.

1 Q. Do you recall how many times you had to hit
2 the toggle switch to keep recording?

3 A. I want to say maybe two or three times, that I
4 can recall.

5 ATTORNEY KOBESKI: Your Honor, at this
6 point in time, I would ask the Court's permission to
7 publish the VHS and the DVD tapes.

8 THE COURT: Do you have that taken care
9 of over there?

10 ATTORNEY KOBESKI: Yes, Judge.

11 * * *

12 (Videotape played in open court.)

13 * * *

14 BY ATTORNEY KOBESKI:

15 Q. Deputy, if you can also while you are watching
16 the video tell the jury exactly what you are saying and
17 what actions --

18 A. Do you want to take the lights down?

19 Q. Yes.

20 A. I think we missed a little bit over by the
21 generator.

22 Q. Rewind a little bit, please.

23 A. Just a little background on that camera.

24 That's the one you can zoom in with the joy stick, pan
25 left and right, up and down.

1 Q. So, that's not the fixed camera?

2 A. That's not the fixed camera. The 109 is the
3 one you can move it to the alley and everything.

4 And those yellow posts, they go around
5 the generator. And that's the corner of the generator
6 beside the building. Those are the windows and the
7 garbage cans along the Sheriff's Office.

8 At that time, I am pretty sure that's
9 when the toggle kind of went off and I had to let
10 Corporal Brady out.

11 And you can barely see, but there is
12 somebody kneeling down by the door there. And that's
13 Corporal Brady pulling up in the patrol car. He is
14 pointing to the ground. That's him taking his asp out.
15 He is looking for his radio when he got out of the
16 patrol car.

17 Now you see the door hanging there.
18 That's the screwdriver holding the door open.

19 Q. Understood.

20 A. That's why the alarm went off, because the
21 screwdriver is holding the door open.

22 * * *

23 ATTORNEY KOBESKI: I am going to publish
24 the DVD that Corporal McCune made.

25 * * *

(DVD played in open court.)

* * *

BY ATTORNEY KOBESKI:

Q. Deputy, is this the fixed camera over the back doors?

A. Correct. Now, while he was kneeling at the bottom, that's when the bottom of the door started to come open a little bit. And I was relaying that information to Corporal Brady on his way out there. I don't know if you notice the screwdriver, but it is at the very bottom of the door still laying there.

Q. Now, deputy, in a moment, the view is going to change. Do you know what the differences in the views are?

A. The next view will be of Camera 109.

Q. Is that the rotating camera?

A. That's the rotating. The one that can zoom. The one I am controlling on the joy stick, that's strictly a fixed camera.

It is hard to see back there, but he is still pulling at the door and trying to pry it open. And then you will see the headlights come up. There he starts to walk away when the patrol car comes up.

Q. Deputy, the fixed camera one and the rotating camera one, are they operating at the same time?

1 A. Yes. All this footage that you see here is
2 all backed up on the computer in the computer room.

3 ATTORNEY KOBESKI: Thank you, Judge.
4 That's all the questions I have.

5 THE COURT: Do you need me to keep the
6 lights off?

7 ATTORNEY GROSS: We would request,
8 please.

9 May I proceed?

10 THE COURT: Yes.

11 * * *

12 CROSS-EXAMINATION

13 BY ATTORNEY GROSS:

14 Q. Good morning, sir.

15 A. Good morning.

16 Q. On the camera that you were controlling that
17 we just saw facing the back of the courthouse, where is
18 that camera mounted?

19 A. Just above the Dumpsters. About, I would say,
20 15, 20 feet in the air.

21 Q. And I ask because of the angle that we see.
22 That's a 360-degree turning radius.

23 A. It is a 360-degree turning radius when you
24 turn it backward. All you are going to see is the wall
25 of the Judicial Center. Once you get to the alley, the

1 Judicial Center cuts it off. So, you can't go any
2 further that way either.

3 Q. You will agree with me that looking at the DVD
4 and the VHS tape, you cannot make out who the individual
5 was outside of the back of the courthouse?

6 A. Correct.

7 Q. And you will agree with me as well that nobody
8 kicked in doors or broke windows or defaced the
9 building?

10 A. Once we got outside to the doors, there were
11 marks, like pry marks on the metal doors. That's about
12 it.

13 Q. Who took pictures of those marks, if you
14 remember?

15 A. I don't know. I don't know.

16 Q. And will you agree with me that those back
17 doors were marked up on the sides even before this
18 incident?

19 A. That I don't know.

20 Q. Scratch marks. Did you take notice of any
21 other doors of the courthouse if they have scratch
22 marks, cuts, nicks in them?

23 A. Not really. When we do courtroom inspecting
24 in the morning, you are supposed to note certain things
25 like that.

1 Q. Like damage?

2 A. Correct.

3 Q. And when you say courtroom inspections, you
4 mean the two doors back there and the two doors that
5 lead out to the hallway?

6 A. Yes, and inside here.

7 Q. And looking at the VHS, I am going to ask you,
8 did you notice that on the VHS there was only one time
9 when the person was on the back door as opposed to the
10 DVD that showed twice, two times?

11 A. Yes. The fixed camera showed two times.

12 Q. And what you were looking at as it was
13 transpiring, was it more in line with the DVD or the
14 VHS?

15 A. The VHS. On the fixed camera, when it comes
16 back the second time is when we actually -- that's just
17 prior to when we noticed him. I think that he tried to
18 get in once before, like maybe a minute or two before
19 that, something spooked him, he went back over, and
20 that's when we saw him. Corporal Brady saw him at first
21 walking around on the back pad and then came back.

22 Q. But, you will agree that the person, from the
23 fixed camera perspective, that person had on gloves,
24 correct, from reviewing that tape?

25 A. I didn't really look this time.

1 Q. But, you looked prior to?

2 A. I watched it once before and that's just more
3 or less to refresh my memory. I am pretty sure he did
4 at that time. I didn't take notice at that time. I
5 wasn't looking for them.

6 Q. This time, you mean the time right now today
7 in court?

8 A. Right. I wasn't looking for them right now.

9 Q. You many agree, sir, in the VHS you did notice
10 a gentleman near those yellow pillars putting on gloves?

11 A. Fixing something on his hands, correct.

12 Q. And then coming back to the back of the
13 courthouse?

14 A. Correct.

15 Q. And you will agree as well that from the angle
16 that we saw in the DVD, from the camera that you are
17 controlling, it is a blur and you can't see anything, it
18 is black?

19 A. On that, yes. It's a bad video. But, now
20 when it is live, you can really see it a lot better.
21 what I am seeing -- what I was seeing in the control
22 room, I just think it is the pixels and, what is it,
23 like three, three frames per second or something --
24 frame per three seconds, it makes it hard to see.

25 Q. But, from the perspective that the jury and

1 myself and everyone else is looking at just before on
2 the camera that you are controlling, it is black. You
3 can't see the individual doing anything from that angle.
4 would you agree with that?

5 A. Not really. I mean, it is dark, but there --
6 are you talking about when he was prying at the door?

7 Q. I am talking about I think it was a minute,
8 minute and a half there, there was a black space.

9 THE COURT: I don't want to hear your
10 testimony, counsel.

11 BY ATTORNEY GROSS:

12 Q. From where you were looking at, deputy, from
13 my perspective when we are looking, if you came towards
14 us, would that be bringing you close to the alleyway?

15 A. The building and alley. I think -- I am not
16 sure what you are asking on that way.

17 Q. When we were looking at the perspective
18 controlling the camera looking at the back door, from
19 the left of the back door, if a person was coming away
20 from that door towards where the camera was.

21 A. Yes, that would be the alleyway then.

22 Q. And in the area where it was dark as well?

23 A. By the generators?

24 Q. Correct. Correct. Is there a way for you to
25 walk through there?

1 A. Yes, to the other alley.

2 Q. So, would that camera pick up other
3 individuals walking through the back of the courthouse
4 in that dark area that we were looking at?

5 A. Only once they come outside that you can
6 actually see them.

7 Q. And is there anything keeping folks from, like
8 a wall, keeping the folks from getting inside the
9 camera's view?

10 A. No.

11 Q. So, they can just freely walk right through?

12 A. Correct.

13 Q. As well, sir, the individual that we saw in
14 that picture, I noticed there was a jump in the DVD.
15 Can you account for that jump that we saw, or that break
16 in the filming, I should say?

17 A. I think the break was in the VHS. Correct.

18 Q. I believe it was. Right when the person was
19 walking towards -- past the Dumpsters.

20 A. Yes. I had to hit the toggle switch again.

21 Q. That's every 30 seconds?

22 A. Approximately 30 seconds, correct.

23 Q. You would agree there is a space where we
24 don't have recording?

25 A. Correct. I mean, it is not much. Maybe about

1 two, three seconds.

2 Q. And as well, the individual seen on there you
3 cannot say is Mr. Ashford?

4 A. No. Correct.

5 Q. And were you involved with the collection of
6 any evidence in this case?

7 A. Just when Deputy Igwe handed me the
8 screwdriver.

9 Q. And that was underneath the door?

10 A. It was lodged underneath the door, correct.

11 Q. You mentioned you could see it in the video?

12 A. On the fixed camera. Yes, there was a line
13 coming off of the door. You can see a little line
14 coming off. That's the screwdriver that was still
15 there.

16 Q. At the left door?

17 A. Almost center.

18 Q. And tell me, too, did you take notice to one
19 of the doors, namely, the right door, looking from the
20 outside in being open?

21 A. I didn't notice that one being -- well, you
22 mean the one the screwdriver was lodged underneath? I
23 think that was the one closest to Camera 111, the fixed
24 camera, which would have been, if you are looking
25 outside, to the left. The left.

1 Q. Looking outside from inside the courthouse?

2 A. Correct.

3 Q. And that door being opened, do you know who
4 opened that door?

5 A. Deputy Leas opened it first. And when he went
6 to help Corporal Brady take the individual into custody
7 more or less, he helped him pick him up and put him in
8 the patrol car, he pushed the door open and the
9 screwdriver got lodged underneath the door and held it
10 open. And that's when Deputy Igwe came out.

11 Q. As the person opened it, it created that
12 force?

13 A. That pushed the door over top the screwdriver
14 and kept it open.

15 Q. Just like opening your car door on top of a
16 curb?

17 A. Yes.

18 Q. So, when that person left who seemed to be
19 fiddling with the door, when they left, the door wasn't
20 open?

21 A. No.

22 Q. It wasn't unlocked?

23 A. You are talking about the individual who tried
24 to break in. Correct?

25 Q. I am talking about the individual who was at

1 the back door.

2 A. who tried -- who was prying at the door?

3 Q. Correct.

4 A. The first time, like I stated previously, I
5 think he tried to get in once before.

6 Q. You noticed --

7 A. But we didn't notice that time. We noticed
8 the second time.

9 Q. And from what you could see on that video, a
10 person was sticking the device on top of the handles?

11 A. In between the door toward the middle the
12 first time, and then the second time towards the bottom.

13 ATTORNEY GROSS: Thank you, sir. That's
14 all I have.

15 THE COURT: Can you turn on the lights,
16 please.

17 ATTORNEY KOBESKI: Yes, Judge.

18 * * *

19 REDIRECT EXAMINATION

20 BY ATTORNEY KOBESKI:

21 Q. Now, deputy, you testified that the quality of
22 when you were watching it live when it was happening was
23 better than the video depicted today. Correct?

24 A. Correct.

25 Q. Now, you testified that there may have been a

1 jump in the VHS for like a second or two when you hit
2 the toggle switch to record again?

3 A. Correct.

4 Q. when you had to do that, did you ever lose
5 vision of what was going on? Did you ever lose sight?

6 A. No.

7 Q. And you saw the suspect until he was taken
8 into custody. Correct?

9 A. Yes.

10 ATTORNEY KOBESKI: That's all I have,
11 Judge.

12 THE COURT: All right.

13 ATTORNEY GROSS: Prompts nothing.

14 THE COURT: Okay. You may step down.

15 ATTORNEY KOBESKI: Your Honor, the
16 Commonwealth would like to call Corporal Shawn Brady.

17 * * *

18 SHAWN BRADY,
19 called as a witness on behalf of the Commonwealth,
20 having been duly sworn according to law, testified as
21 follows:

22 * * *

23 ATTORNEY GROSS: Your Honor, before the
24 Commonwealth begins, I'd like to ask what information
25 Corporal Brady has in front of him that he might be

1 referring to, if it is something that's not provided in
2 discovery as of yet.

3 THE COURT: Come up and take a look at
4 it.

5 ATTORNEY GROSS: Thank you, Your Honor.

6 * * *

7 DIRECT EXAMINATION

8 BY ATTORNEY KOBESKI:

9 Q. Please state your name, Corporal.

10 A. Shawn Brady.

11 Q. And what is your occupation?

12 A. Corporal with the York County Sheriff's
13 office.

14 Q. How long have you been with the Sheriff's
15 Department?

16 A. A little under five years.

17 Q. Corporal Brady, do you recall if you were on
18 duty on March 17th of last year?

19 A. I was.

20 Q. And again, what hours would you have been
21 working?

22 A. I was working the 6:00 p.m. to 6:00 a.m. shift
23 at Central Booking.

24 Q. And do you recall where you would have been in
25 the early morning hours on March 17?

1 A. The early morning hours of March 17, I just
2 completed a security check of the buildings in York. We
3 own a building at 100 West Market Street and, of course,
4 the building at 28 East Market Street. We had to do
5 building checks of those every two hours if Central
6 Booking wasn't busy to make sure there were no break-ins
7 or -- make sure everything in the building was still
8 secure.

9 Q. And once you were finished completing those
10 tasks, Corporal, what did you do?

11 A. I returned to the Judicial Center here, parked
12 the cruiser in the parking lot or the parking garage in
13 the basement, and returned to the control room.

14 Q. Now, when you went down to the control room,
15 were there any deputies or sheriffs present?

16 A. Deputy John Brenneman was in the control room.

17 Q. And what were you doing once you got down to
18 the -- back to the control room?

19 A. When I returned to the control room, I was
20 hanging up the keys from my patrol and taking off my
21 duty belt.

22 Q. Can you tell the jury what happened next,
23 Corporal.

24 A. As I was walking, I was staring up at the
25 cameras and I noticed an individual back at the loading

1 dock. When I pointed it out to Deputy Brenneman, he
2 started to record what was going on. I watched the
3 individual for a few moments and then I told Deputy
4 Brenneman to buzz me out the door, I was going to see
5 what the individual was doing.

6 Q. You said a few moments you were watching this
7 video. Do you remember about how long specifically it
8 was?

9 A. 10 to 15 seconds. I saw the individual back
10 at the generator. I saw him walk around. I saw him
11 make his way to the doors. I didn't see him make it to
12 the doors. I saw him walking towards the doors. That's
13 when I left.

14 Q. What time did you first notice this
15 individual?

16 A. Right around 3:10 a.m.

17 Q. And now, what actions did you take next?

18 A. I grabbed the keys that I had just hung up to
19 the cruiser that was parked in the garage, put on my
20 duty belt again, ran out of the control room through the
21 one locked door. Had to unlock another door. Ran out
22 to the garage and got in the car and exited the garage.

23 Q. And you exited the garage, I am assuming, in a
24 marked police vehicle?

25 A. Marked sheriff's unit, yes.

1 Q. Now, where exactly does this garage -- where
2 do you exit?

3 A. The exit to the garage is right on
4 Philadelphia Street. It is a big metal door right next
5 to the alley that runs, I guess it would be behind us
6 right now.

7 Q. And once you pulled out of the garage onto
8 Philadelphia Street, where did you drive to?

9 A. I immediately took a right right outside the
10 garage door, which put me in the alley directly behind
11 us. And then as I went around the building, I came to
12 the door and made another right and pulled right into
13 the loading dock.

14 Q. And from the video, we can see you didn't
15 activate your emergency lights or anything like that.

16 A. Correct. I just pulled up.

17 Q. Now, when you got to the back of the
18 courthouse, what did you see, if anything?

19 A. I saw an individual that matched the
20 individual I saw in the video walking away from the
21 doors. I exited my vehicle and I took that individual
22 into custody.

23 Q. Now, you testified that this individual was
24 near the doors when you pulled up.

25 A. Correct. When I first noticed him, he was

1 walking off of the step to the doors.

2 Q. Now, did he look in your direction of your
3 vehicle?

4 A. Yes, he did.

5 Q. Now, when you parked your vehicle, how close
6 or how far away would you say you were from him?

7 A. Originally, probably 15 feet. As the scenario
8 continued, within five feet.

9 Q. In which direction was this individual or this
10 suspect walking? Was he walking towards your car or
11 away from the vehicle?

12 A. He was walking towards the vehicle.

13 Q. I am assuming you got out of the car because
14 you took the individual into custody?

15 A. Correct.

16 Q. When you got out of the vehicle, did you say
17 anything to this individual?

18 A. I identified who I was, directed the
19 individual to get on the ground numerous times. He
20 refused. I pulled out my baton and expanded it and at
21 that time the individual laid down.

22 Q. Now, you said you identified who you were.
23 You told him to stop or get down?

24 A. I told him to get down to the ground.

25 Q. Now, you said he refused at first?

1 A. I told him at least, at least three times.
2 The first two times, he continued walking towards the
3 back of the courthouse and past my vehicle.

4 Q. Was he looking at you when you were giving
5 these commands?

6 A. Yes, he was.

7 Q. Did he appear to hear you?

8 A. He appeared to hear me. He just ignored me.

9 Q. What tone of voice were you using?

10 A. Very stern or loud voice.

11 Q. Now, you said once you pulled out your baton
12 and went towards him, he went right down?

13 A. As soon as I pulled my baton out and expanded
14 it, he lay down on the ground.

15 Q. Is that when you took the individual into
16 custody?

17 A. That's correct.

18 Q. The individual that you took into custody that
19 morning, corporal, do you see him in the courtroom
20 today?

21 A. Yes, I do.

22 Q. Can you point out that individual and tell me
23 where that individual is seated?

24 A. He is seated next to defense counsel in a
25 bluish shirt with white spots on it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ATTORNEY KOBESKI: Let the record

reflect the witness has identified the Defendant.

THE COURT: It will so reflect.

BY ATTORNEY KOBESKI:

Q. How was the Defendant dressed?

A. He had a black hoodie, black knit cap, black gloves, jeans, and dark sneakers or boots. I can't remember which they were. And glasses.

Q. Now, corporal, how much time would you say passed from when you first started to leave the control room to go outside until you actually saw the Defendant and took him into custody?

A. No more than two minutes from the time I saw him until the time I took him into custody.

Q. Now, at any point during this entire incident, did you see any other person back in the vicinity of where the Defendant was?

A. No, I did not.

Q. Is it fair to say that if there were other people in that vicinity, the camera would have caught them?

ATTORNEY GROSS: Objection.

speculation.

THE COURT: Sustained.

BY ATTORNEY KOBESKI:

1 Q. Once you put him into custody, where did you
2 take the Defendant?

3 A. I alerted County Control that I had one in
4 custody. I went from the back of the loading dock back
5 down to the garage and into Central Booking.

6 Q. In Central Booking, does your department have
7 a property form that they use?

8 A. Yes, we do, for everyone that comes in, yes.

9 Q. Can you tell the jury how the property form is
10 used.

11 A. When an individual comes into Central Booking,
12 usually outside in the sally port before they enter we
13 have them remove all their property from their pockets,
14 jewelry, anything like that. We put it into a bin.
15 They have to enter through a metal detector. Once they
16 do that, they bring the bin in with the property, laying
17 it on the shelf or bench next to them. At that time or
18 as soon as we get to it, a deputy will do their property
19 on a Sheriff's Department property form. Then we have
20 the individual sign that's the property they came in
21 with.

22 ATTORNEY KOBESKI: Your Honor, may I
23 approach the witness?

24 THE COURT: Yes.

25 ATTORNEY KOBESKI: Let the record reflect

1 I am handing the witness what has been marked as

2 Commonwealth's Exhibit Number 5.

3 BY ATTORNEY KOBESKI:

4 Q. Corporal, do you recognize that document?

5 A. I do.

6 Q. Could you please tell the jury what this
7 document represents.

8 A. This is the property form for Mr. Ashford the
9 night he was brought in.

10 Q. Can you tell the jury if there is any
11 signatures or anything like that on the document?

12 A. There is. Mr. Ashford's appears twice on the
13 document.

14 Q. Why are there two signatures on the document?

15 A. The first signature would be for once we take
16 everything off and inventory it, we have the individual
17 sign saying, yes, this is everything I had when I came
18 in. The second signature is when he leaves that, yes,
19 everything I got back is what I had originally.

20 Q. And can you tell the jury what items of the
21 Defendant's are listed on the property sheet?

22 A. We marked one jacket, two keys, a wallet,
23 brown, driver's license, Social Security cards, Access
24 cards, Gateway cards, one Dauphin County library card,
25 one pair of eyeglasses, and one black hat.

1 Q. Now, you indicated there is a jacket. Is that
2 the hoodie?

3 A. That's correct.

4 Q. One thing I noticed that isn't on the list is
5 a pair of gloves.

6 A. Correct.

7 Q. Can you explain why the gloves were not? Were
8 they given back to him? Why are they not on the list,
9 if you know?

10 A. When I originally took the individual into
11 custody, I had to remove his gloves to put the handcuffs
12 on because you couldn't get them on over top. And I
13 can't remember whether or not I put them in his pockets
14 of his jacket or not. If they were in the jacket, there
15 is a good chance they wouldn't have made it on the
16 property sheet.

17 Q. Are you positive when you took the Defendant
18 into custody he had gloves on?

19 A. Absolutely.

20 Q. Now, you are the affiant in this case. You
21 were the one who filed the charges. Correct?

22 A. Correct.

23 Q. Now, in other words, you were like the lead
24 investigator in the case you could say?

25 A. I was the lead affiant, yes.

1 Q. Understood. Now, there was a screwdriver
2 collected as evidence in this case. Correct?

3 A. Correct.

4 Q. Did you have the screwdriver dusted or tested
5 for fingerprints?

6 A. I did not.

7 Q. Any reason why you didn't do that?

8 A. There were two reasons. I took the individual
9 directly into custody as the incident unfolded. And
10 two, the individual was wearing gloves.

11 Q. So, there wouldn't be any prints on it?

12 A. No.

13 Q. Corporal, do you know if pictures were taken
14 of the alleged damage to the door that was trying to be
15 pried open by the Defendant?

16 A. I did ask maintenance to take pictures of any
17 damage that they noted on the door.

18 Q. Did you personally observe this damage as
19 well?

20 A. I went and looked the next day or so.

21 ATTORNEY KOBESKI: May I approach the
22 witness, Judge?

23 THE COURT: Yes.

24 ATTORNEY GROSS: Your Honor, I would
25 agree to the authenticity of that being the doorway,

1 even though the corporal took pictures and has
2 familiarity.

3 ATTORNEY KOBESKI: Let the record
4 reflect I am handing the witness what has been marked
5 Commonwealth's Exhibit Number 1.

6 BY ATTORNEY KOBESKI:

7 Q. Can you identify what Commonwealth's Exhibit
8 Number 1 is?

9 A. Yes. These were the pictures and were added
10 to the file.

11 Q. How many?

12 A. Four.

13 Q. Do these photographs fairly and accurately
14 depict the damage to the door that you observed either
15 the next day or the day after?

16 A. Yes.

17 ATTORNEY KOBESKI: Permission to publish
18 on the Elmo.

19 THE COURT: Okay.

20 BY ATTORNEY KOBESKI:

21 Q. Corporal, can you describe to the jury what
22 each photo represents.

23 A. The first photo, I am talking upper left-hand
24 corner, is what appears to be a pry mark. The finger
25 point is, I am assuming, someone from the maintenance

1 department.

2 The second photo to its right still in
3 the upper part is the middle part of the door where,
4 there again, appears to be a pry mark on it.

5 ATTORNEY GROSS: I object to any further
6 testimony as to what it appears to be. I think we
7 should stick with damage as that goes to the ultimate
8 element of the break and enter.

9 THE COURT: What exactly is your
10 objection?

11 ATTORNEY GROSS: My objection is that I
12 don't think this individual is qualified to talk about
13 what caused damage that --

14 THE COURT: I think he is. Overruled.
15 Go ahead.

16 THE WITNESS: The bottom left photo is a
17 picture of the whole door. You really can't see much.
18 But, if you look to the bottom of that picture, you will
19 notice a mark on the door, on the left-hand door that's
20 lighter than the other parts of the door. That's where
21 the paint or metal was disturbed and moved.

22 And then the photo next to it is that
23 area enlarged.

24 ATTORNEY KOBESKI: Understood. Your
25 Honor, that's all the questions I have for this witness.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Cross-examination.

ATTORNEY GROSS: Thank you. May I keep the lights down and pictures up for cross?

THE COURT: Sure.

* * *

CROSS-EXAMINATION

BY ATTORNEY GROSS:

Q. Good morning, sir.

A. Good morning.

Q. Let's first look at the pictures here. The screwdriver that is in front of you, did you have the opportunity to re-enact the event by trying to place the screwdriver into the doors?

A. I did not.

Q. And would you agree with me looking at these doors that there are many nicks and scratches on these back doors to the loading dock of the courthouse?

A. They are the doors that are used by anyone from computer repair people to the U.S. Mail coming in. We do have bay doors that are off to the left that if anyone is bringing anything large we open that and let them bring it in that way.

Q. Would you agree there have been nicks and marks on those doors over the last four years, four and a half years that the courthouse has been open?

1 A. Sure.

2 Q. I am now drawing your attention to Picture
3 Number 2 in the upper right-hand corner. Are you
4 focusing on that whiter mark right at the bottom part of
5 the handles?

6 A. Right in between the two handles, yes, I am.

7 Q. Is that the same mark you're referring to on
8 the left-hand picture?

9 A. Yes, sir.

10 Q. The left-hand side is closer up?

11 A. Yes.

12 Q. That's the bottom part of the handles. I am
13 also looking to the right-hand side lower picture.
14 That's very close. And there am I looking at what door?

15 A. That's also going to be the left-hand door.

16 Q. In that same spot as the picture above?

17 A. No. That's the picture below. The below left
18 picture and the below right picture are the same area.
19 You can see the mat underneath it.

20 Q. okay. That's looking at the bottom of the
21 door?

22 A. That's correct.

23 Q. Much further below the handles?

24 A. Correct.

25 Q. Thank you. You mentioned that the individual,

1 according to the property records, there is no mention
2 of gloves, and that may have been an oversight based on
3 how you processed them or gave them back to Mr. Ashford
4 or the individual involved?

5 A. That's correct. I know at the time of this
6 happening and Mr. Ashford being brought in, I know the
7 property was not done right away. Some of the deputies,
8 Deputies Lease and Igwe were still upstairs at this
9 time. I was downstairs with Mr. Ashford in the holding
10 cell/Central Booking area. I did not do his property, I
11 know that.

12 Q. Do you recall the eyeglasses that Mr. Ashford
13 had on --

14 A. I do.

15 Q. -- when he was taken into custody?

16 A. They fell off when he laid down. But, yes, I
17 do remember.

18 Q. And were they similar to what Deputy Igwe
19 testified to, dark rim or like silvery thin rim around
20 the glass?

21 A. They looked like prescription glasses. I
22 wasn't focusing on what the glasses looked like.

23 Q. And do they look similar to the glasses that
24 Mr. Igwe was wearing this morning? Do you recall?

25 A. I would just be guessing.

1 Q. okay. Did they appear to be thick gold-rimmed
2 glasses?

3 A. No.

4 Q. Now, speaking about what occurred out back of
5 the courthouse, is it correct to say that you did not
6 see any individual trying to gain access to the
7 courthouse?

8 A. Correct, no, I did not.

9 Q. And what you saw -- strike that. When you
10 left the courthouse, grabbed your keys, went to the car
11 and left to apprehend the individual, what route did you
12 have to take to get to the back of the courthouse?

13 A. When I left the garage, I turned right, drove
14 maybe 300, 400 feet, turned right again and was at the
15 dock, at the loading dock. The garage and the alleyway
16 that I turned right on are right next to each other. I
17 almost immediately had to back up and go in again it was
18 that close.

19 Q. You didn't go down Philly, down George. Not
20 to say you went the wrong way on the roadway, but you
21 took the short route?

22 A. Yes. Correct.

23 Q. Because time is of the essence?

24 A. That's correct.

25 Q. And when you came upon the individual, you

1 said he was walking from the doorway?

2 A. He was walking away from the door. He was
3 just stepping off of the -- when I first noticed him, he
4 was just stepping off of the raised area that's by the
5 doors. He was making the step down to exit.

6 Q. And then he was walking towards the alleyway
7 toward the bank parking lot?

8 A. Toward the back alleyway, yes, past my patrol
9 car.

10 Q. And as well, you can't say that the individual
11 trying to get -- or making any action at the doorway
12 would be Mr. Ashford, correct, because you weren't
13 there?

14 A. Not orally, no, I wouldn't be able to say
15 that.

16 Q. You were only there at the end to place the
17 individual under arrest?

18 A. That's correct.

19 Q. And as well, from where you were watching, did
20 you notice anyone else around that area?

21 A. There would have been no one else in the
22 alleyway behind us, because that's the alleyway I came
23 up. There was no one walking in that alleyway or by the
24 generators. When I turned right onto whatever, I don't
25 know what they call this alleyway that runs here, when I

1 turned right, there was no one in front of me or walking
2 down the alleyway. The only individual I saw was the
3 individual stepping off the back loading dock, which was
4 Mr. Ashford.

5 Q. Did you get the opportunity through your
6 investigation and through processing Mr. Ashford to
7 determine his height and weight?

8 A. I got his height off his driver's license.

9 Q. That would be five foot three?

10 A. Yes.

11 Q. Short gentleman?

12 A. Yes.

13 Q. And did you take notice to his weight?

14 A. I did not -- I think we got that later in the
15 morning.

16 Q. And tell me, sir, when you were buzzed out of
17 the control area down in the Sheriff's Department in the
18 basement, who did that for you?

19 A. Deputy Brenneman.

20 Q. And was he telling you what was occurring as
21 you were buzzing out?

22 A. As soon as I left the control room, Deputy
23 Brenneman was letting me know what was going on. From
24 the control room to the first door I exited is maybe 50
25 feet. The second door that I exited is right next to

1 the first door I exited. I just have to use a key to
2 get through that one. Then it is about ten feet through
3 another door, a right-hand turn out a door which is
4 immediately behind the other one, and then in my
5 cruiser.

6 Q. So, the longest part of this would be waiting
7 for that garage door to go up?

8 A. Correct, that's the longest part.

9 Q. Really, within seconds of coming up. Did you
10 take notice to the length of the film we were watching,
11 the DVD, the elapsed time?

12 A. The fixed one, the 111, the one that's fixed
13 over the door.

14 Q. The one that was greatly illuminated around
15 the individual around the back door.

16 A. That's the fixed camera. Yes, I did.

17 Q. That was totally about three minutes start to
18 finish?

19 A. It was actually five minutes from start to
20 finish, but the individual went off frame about 3:30.
21 That's the last time you see him.

22 Q. And once it just shows nothing except for the
23 landing, that's after the person was being arrested and
24 taken?

25 A. Correct.

1 Q. And in your experience working here at the
2 courthouse in the last, I guess -- working five years,
3 sir?

4 A. Just about five years.

5 Q. And from working your shift, people always
6 come through the alleyway. Is that correct?

7 A. The alleyway on a good Friday and Saturday
8 night, there is people walking up the alleyway.

9 Q. Bars letting out, restaurants closing?

10 A. Yes.

11 Q. And the individuals that come through, do they
12 ever come towards the recycling bin or other areas where
13 this individual was found that night?

14 A. The people walking home usually from the bars
15 or restaurants, no. We get a lot of guys pushing
16 shopping carts or people like that will go up to the
17 recycling bins or garbage cans.

18 Q. Are these people arrested?

19 A. No. We usually tell them just to get away,
20 move away.

21 Q. And in this case, the individual you took into
22 custody was Ken Ashford?

23 A. Kenneth Ashford, yes.

24 Q. And did he break any windows --

25 A. No.

1 Q. -- to the courthouse? Did he deface with
2 spray paint the courthouse that evening?

3 A. No.

4 Q. And the damage that we see here that you are
5 pointing to in the pictures, these pictures are taken a
6 few days afterwards?

7 A. The morning after.

8 Q. The morning after. So, are you aware if there
9 were any deliveries or any other items that were brought
10 through those doors after he was taken into custody and
11 when these pictures were taken?

12 A. The only delivery I know that's made at any
13 time of the morning hours is the CVC individuals. They
14 usually come around 5:30 or 6:00. Those are the people
15 that put the sodas and food in the food machines in the
16 vending area. We don't let those people in the
17 building. Maintenance has to do that when they get here
18 at 6:30 or 7:00. But, they come through those doors.

19 A. They come through those doors. Or, if they
20 were bringing a large shipment, like I said, the bay
21 door goes up.

22 Q. In your experience, I imagine, in your
23 profession, you investigate other crimes?

24 A. We don't investigate.

25 Q. You don't -- strike that. Looking at here

1 with that screwdriver and knowing this courthouse, that
2 mark, is that enough to open up a door?

3 ATTORNEY KOBESKI: Your Honor, that
4 calls for speculation.

5 THE COURT: It does.

6 ATTORNEY GROSS: Withdrawn.

7 BY ATTORNEY GROSS:

8 Q. Detective Brady -- Corporal Brady, I was
9 trying to promote you.

10 A. Hey, it is all right.

11 Q. Yesterday, I took the judge back down to an
12 attorney. We'll be consistent.

13 Looking here at these doors and this
14 damage and looking at the video as well, you cannot say
15 with certainty that Kenneth Ashford was at that back
16 door, can you?

17 A. After I watched the video and --

18 Q. As you saw it right there that day. You were
19 not present. Correct?

20 A. I was not present at the time or when anyone
21 was at the door, the back door. I was not watching the
22 video.

23 Q. You mentioned about generators. You saw the
24 individual walking away from the doors toward the
25 generators?

1 A. Correct.

2 Q. And the generators, you were looking toward
3 the back door, toward the alleyway, or toward the
4 building?

5 A. They are toward the back alleyway, which is
6 back here. They are still along the side of the
7 building, but it backs up. The generator is like -- it
8 is what I would call half of a tractor trailer. That's
9 what it looks like. It looks like a tractor trailer
10 like cut in half, but it is green and it starts about
11 three-quarters -- it is about 25 feet long and it backs
12 up to the alley.

13 Q. Looking at the items that Mr. Ashford was
14 wearing that evening, you said he had on dark sneakers
15 or dark boots?

16 A. They were dark. I couldn't tell if they were
17 boots or sneakers.

18 Q. And as well, you were aware soon after this
19 incident that his family was, well, alleging that it was
20 not him?

21 ATTORNEY KOBESKI: I object as to
22 relevance.

23 ATTORNEY GROSS: As far as the
24 collection of the evidence, based on what he knew to be
25 upcoming issues --

1 THE COURT: Sustained.

2 BY ATTORNEY GROSS:

3 Q. You would agree that the depiction of the
4 pictures is what occurred, despite your memory of what
5 someone is wearing. Is that correct, sir?

6 A. Yes. The camera doesn't lie. If I am
7 mistaken on something, the camera would tell me.

8 ATTORNEY GROSS: Thank you, Corporal.

9 * * *

10 REDIRECT EXAMINATION

11 BY ATTORNEY KOBESKI:

12 Q. Corporal, very briefly. You saw this suspect
13 for about 15 seconds before you went outside. Correct?

14 A. Correct.

15 Q. And in those 15 seconds or so, were you able
16 to tell what he was wearing, get a good visual on him?

17 A. Yes, I was.

18 Q. Now, when you went back outside and took the
19 Defendant into custody, was the Defendant wearing the
20 same clothes as the person in the video?

21 A. He was.

22 Q. Did he appear to be about the same height and
23 same weight, same build?

24 A. Same build. I couldn't tell height and weight
25 on the video.

1 Q. Now, you testified that on Friday and Saturday
2 nights after the bars or restaurants let out, you get
3 some foot traffic, people cutting through the alley?

4 A. Correct.

5 Q. This didn't occur on Friday or Saturday night?

6 A. It was a Sunday morning -- I'm sorry, Monday
7 morning.

8 Q. Sunday night, Monday morning?

9 A. Correct.

10 Q. 3:00 in the morning?

11 A. Correct.

12 Q. Is it fair to say the foot traffic is even
13 less than a Friday or Saturday night when the bars let
14 out?

15 A. From my experience in working in Central
16 Booking for two years, yes.

17 Q. You saw no one else around the area?

18 A. No one.

19 ATTORNEY KOBESKI: That's all I have.

20 THE COURT: Anything else?

21 ATTORNEY GROSS: Nothing, Your Honor.

22 THE COURT: I have a question.

23 THE WITNESS: Yes, sir.

24 THE COURT: You watched the video and you
25 have reviewed the DVD and the tape in preparation for

1 today, is that correct, and in preparation of filing
2 charges?

3 THE WITNESS: Yes. I watched all that
4 before I filed charges.

5 THE COURT: Now, the key issue, at least
6 from what I have seen, is that when you came around the
7 corner, I don't care what you saw before you got in your
8 car, I want to talk about when you came around the
9 corner in your squad car, you saw an individual walking
10 away from those back doors. Is that correct?

11 THE WITNESS: That's correct.

12 THE COURT: Did you see any other
13 individuals?

14 THE WITNESS: None.

15 THE COURT: Okay. And you have watched
16 the video. Is that correct?

17 THE WITNESS: That's correct.

18 THE COURT: And you saw your squad car
19 come in and that individual walking away from the doors.
20 Is that correct?

21 THE WITNESS: That's correct.

22 THE COURT: And the individual that you
23 took into custody that you saw walking away from the
24 doors, is that individual in court today?

25 THE WITNESS: Yes. It is Mr. Ashford in

1 the blue shirt.

2 THE COURT: I have nothing further. Does
3 anybody have any further questions?

4 ATTORNEY GROSS: No, Your Honor.

5 THE COURT: You may step down.

6 Okay. Any other witnesses?

7 ATTORNEY KOBESKI: No, Your Honor.

8 THE COURT: Gentlemen, can I turn the
9 lights on?

10 ATTORNEY GROSS: Yes.

11 ATTORNEY KOBESKI: Please.

12 THE COURT: Do you think we might need
13 this?

14 ATTORNEY GROSS: Your Honor, my
15 witness --

16 THE COURT: The problem for me is that
17 that overhead creates a lot of ambient noise for them.
18 It becomes like a white noise for them. Turn it off at
19 least for a period of time.

20 ATTORNEY GROSS: Correct. I will have
21 pictures, but then I will just put it back up.

22 THE COURT: All right. That will power
23 down and then should be okay. Okay.

24 ATTORNEY KOBESKI: Your Honor, the
25 Commonwealth would move to introduce Commonwealth's

1 Exhibits 1, 2, 4 and 5 into the record.

2 THE COURT: Any objection?

3 ATTORNEY GROSS: None, Your Honor.

4 THE COURT: 1, 2, 4 and 5 may be admitted
5 into the record.

6 ATTORNEY KOBESKI: The Commonwealth
7 would rest.

8 THE COURT: All right.

9 ATTORNEY GROSS: Two matters to raise
10 before the Court.

11 THE COURT: At the bar?

12 ATTORNEY GROSS: Best outside the
13 earshot of the jury.

14 THE COURT: We'll take our break at this
15 point, ladies and gentlemen. We'll take about a
16 15-minute break and proceed on from there.

17 * * *

18 (Jury left the courtroom at 10:45 a.m.)

19 * * *

20 (The following discussion occurred in
21 open court outside the presence of the jury:)

22 * * *

23 THE COURT: Yes, sir.

24 ATTORNEY GROSS: Thank you. Two
25 matters. First and foremost, Your Honor, if you recall

1 back in late January of 2009, you allowed counsel, my
2 client, Attorney Kobeski, and others to review the VHS
3 that was provided in your chambers. We reviewed it. I
4 reviewed it and took notes. What was present there
5 today is what I recall seeing on that date. However, my
6 client has asked me to bring your attention to the fact
7 that he believes that what we watched of the VHS was not
8 the actual depiction of the VHS. I am not certain how
9 to handle that aspect. I don't prefer to be a witness
10 in this case.

11 THE COURT: He can raise the issue
12 through his own testimony or through anyone other than
13 Attorney Kobeski that was present during the review.
14 Did he review it with you?

15 ATTORNEY GROSS: He was with me.

16 THE COURT: He can be a witness. He can
17 say I challenge the authentication of that at this point
18 in time. But, he needs to present that through either
19 his testimony, Corporal Brady's testimony, or someone
20 else who may have been present. I don't know if
21 Corporal Brady was there.

22 ATTORNEY GROSS: There was another
23 deputy that was present at the time.

24 THE COURT: So, he needs to do it
25 through his own testimony or someone else that was

1 present. That way, he can challenge the authenticity of
2 what was shown to the jury.

3 ATTORNEY GROSS: Putting that issue aside
4 for a moment.

5 THE COURT: Okay.

6 ATTORNEY GROSS: At this point, I ask to
7 make a judgment of acquittal on charges of attempted
8 burglary, Your Honor. We have evidence that a person
9 was at the back door. The intent can be seen through
10 circumstantial evidence in these type of cases, but
11 attempted burglary, we heard evidence and there is
12 nothing there. What crime was there intended to commit
13 therein? We have a person outside the back of the
14 courthouse fiddling around with a door, despite what's
15 been testified to as seen ajar somewhat. We don't even
16 see a screwdriver in someone's hand. We see someone at
17 the back door. I don't believe legally at this point
18 that attempted burglary can move forward to the jury
19 just based on the fact that where is the intent, what
20 intent, what crime. Just someone that might be around
21 the back of the courthouse or lurking or wandering back
22 and forth does not give rise to a charge of attempted
23 burglary.

24 And by that same token, Your Honor, we
25 have the issue of attempted criminal trespass. And

1 trespass is one of those situations where it is not
2 either you are trespassing or you are not. We can do
3 attempt. If my client was actually out back of the
4 courthouse, nothing was stated as far as in that area
5 would be a no trespassing area. Did he attempt to
6 gain -- to trespass inside the courthouse and what
7 actions were taken? We still don't have --

8 THE COURT: Are you saying he can't be
9 guilty of attempted trespass?

10 ATTORNEY GROSS: I am saying you can.

11 THE COURT: I just want to be clear.

12 ATTORNEY GROSS: Oh, no, you can, yes.
13 But, the actions taken -- we don't have the information
14 here, Your Honor. But, from what was presented so far,
15 he's at the back of the courthouse. We don't see any
16 item in the hands. We see gloves touching the doors and
17 down at the bottom. Where that screwdriver came from
18 they have not proven. They see something.

19 And also, Your Honor, possession of an
20 instrument of a crime, although it is a small charge,
21 still, instrument of a crime is misdemeanor of the first
22 degree and there is not enough to go forward. Nobody
23 saw the item in his hand, just there afterwards.

24 THE COURT: With regard to each argument
25 put forth by defense counsel, reviewing the evidence in

1 the light most favorable to the Commonwealth, all
2 reasonable inferences therefrom, the Commonwealth has
3 sustained its burden of presenting evidence of attempted
4 burglary, attempted criminal trespass.

5 Furthermore, the screwdriver, the way and
6 manner in which it was used, as to the Commonwealth
7 meeting their burden with regard to possessing
8 instruments of crime, under the circumstances, we see
9 evidence that the individual depicted in that video is
10 looking through the windows and we know the Sheriff's
11 Department would have probably hundreds of thousands of
12 dollars worth of computer equipment right inside that
13 window. Furthermore, the items that we have been
14 putting around for the past day, the video, et cetera,
15 that is about \$25,000 a unit right there.

16 The individual approaches the door. He
17 appears to be shimmying at the door with something. An
18 object was later found that was stuck in the door. That
19 was a screwdriver. The individual that was depicted in
20 the video was taken into custody by the corporal, and
21 that individual was the Defendant.

22 So, based upon the information presented
23 to the Court, there is easily sufficient evidence to go
24 forward at this point in time.

25 Let's take a ten-minute break. Do you

1 need to colloquy your client?

2 ATTORNEY GROSS: He is going to testify.
3 And we still have the issue of authenticity.

4 THE COURT: He's got to testify.

5 ATTORNEY GROSS: I No.

6 THE COURT: So, I don't need to colloquy
7 him.

8 ATTORNEY GROSS: Oh, he is going to
9 testify.

10 * * *

11 (Recess taken from 10:50 a.m. to 11:05
12 a.m.)

13 * * *

14 AFTER RECESS

15 * * *

16 THE COURT: Okay. Are you ready?

17 ATTORNEY GROSS: Before we go there,
18 Your Honor, I am going to have my client's mother,
19 Eloise White, testify. We will be introducing seven
20 photos. I believe that the Commonwealth is going to
21 either have an offer of proof request or an objection.

22 THE COURT: Okay. Tell me what you are
23 going to show.

24 ATTORNEY GROSS: Your Honor, they will
25 be marked as Defendant's Exhibit Number 1, a set of four

1 and three pictures of my client's mother, Eloise White.
2 she will testify she is five foot two and
3 three-quarters. She took ones of herself beside the
4 respective pillars out back of the courthouse last year.
5 she is going to authenticate the picture. My client is
6 five, three. He was actually seen behind the pillars.

7 The other pictures are pictures from
8 the DVD by the Commonwealth. They are just still
9 frames. That's good to cast doubt as to my client being
10 back of the courthouse.

11 Other pictures being presented are my
12 client crouching down as they allege at the back door of
13 the courthouse.

14 THE COURT: You really want to show them
15 pictures of your client crouching down?

16 ATTORNEY GROSS: I am not -- I am saying
17 the person they described was wearing tan boots as
18 opposed to dark boots as they had described.

19 But, most importantly, the person they
20 are saying in that picture when you look close is a
21 white gentleman, gold-rimmed glasses, neither of which
22 were found on my client, and my client is not white.

23 THE COURT: Let me see the pictures. So,
24 who is going to testify that this is a white person with
25 gold glasses?

1 ATTORNEY GROSS: They will speak for
2 themselves. However, my client's mother can state she
3 actually took the pictures from the DVD. She cannot
4 offer commentary about who that person might be, except
5 I am looking at this and this is not my son. That is
6 the extent. And she can authenticate taking the
7 pictures.

8 THE COURT: well, frankly, the pictures,
9 obviously, we made a part of the record, that what is
10 depicted in these photographs isn't anyone's son. It is
11 a blob. For her to say that's not my son would infer
12 she can somehow make out the facial characteristics of a
13 blob from a photograph that's lifted from the DVD.

14 Who lifted these from the DVD?

15 ATTORNEY GROSS: Ms. Eloise white.

16 THE COURT: What is your position?

17 ATTORNEY KOBESKI: Your Honor, I will
18 start with the pictures that were allegedly taken from
19 the DVD. First of all, we don't know if they were
20 edited.

21 THE COURT: You can ask that question on
22 cross-examination, just like he could ask that of your
23 witnesses.

24 ATTORNEY KOBESKI: Understood. But, for
25 her, as you indicated, to testify that he is not my son,

1 this person is white, I don't think she would be in a
2 position to testify to those facts. Like you said, at
3 least the copies of the pictures I have, it doesn't show
4 anything. What we saw in the video was a blurry vision
5 of cheeks and a chin.

6 THE COURT: I am inclined to disallow her
7 to testify that that is not her son because, A, she was
8 not there on the night in question; B, I don't think
9 anyone would be in a position without somehow modifying
10 these photographs through pixel imaging to create a
11 photograph that was actually appreciable and discernible
12 with regard to facial characteristics. We don't have
13 that here. There is no other way for me to characterize
14 it other than the fact that it is a blur. And I am not
15 just talking about a blur. If you cut that photograph
16 out and sever it from what appears to be the body area,
17 you would have no idea what that was. I am just looking
18 at it and there is no telling that that's a head. And
19 so, therefore, for her to say that's not my son -- it is
20 somebody.

21 ATTORNEY GROSS: It is somebody's son.

22 THE COURT: It is somebody. But, she
23 can't tell from these photographs -- I don't think
24 anyone can tell from these photograph. It could be my
25 son. I couldn't tell you. So, I don't know -- I don't

1 think she is in a position to be able to tell the jury
2 that that's not her son.

3 ATTORNEY GROSS: Understood. Here is
4 the request, though. We have seen the DVD and we have
5 seen the VHS one time through. The information I wish
6 to elicit is, essentially, to slow it down at those
7 areas, to still frame it. The fixed camera -- yes, the
8 fixed camera outside of the loading dock does zoom in
9 upon the face. You see the characteristics or the face
10 of the individual, despite having the illumination, is
11 extremely light-skinned with glasses, which would fall
12 in line with the question I asked of Corporal Brady, are
13 these glasses gold-rimmed. That's what's depicted, the
14 shiny outside rim.

15 THE COURT: Where? I don't see any of
16 that from the photographs. I don't see gold. I see a
17 bit of what appears to be reflection on the individual's
18 right eye. I don't see anything gold.

19 ATTORNEY GROSS: You just said yourself
20 you can't see anything. You can't tell it is a head.

21 THE COURT: That perhaps could be a
22 reflection off the glasses.

23 ATTORNEY GROSS: Correct.

24 THE COURT: It appears to be -- to have
25 different coloration from the rest of the areas of the

1 face. But, for someone to say those are rimmed glasses,
2 gold-rimmed glasses, if you didn't tell me and I didn't
3 hear testimony that there were glasses on the
4 individual, I wouldn't be able to say those were glasses
5 and what shade the rims on the glasses were.

6 You are presenting your client's mom as
7 an expert in an area that, A, she doesn't have expertise
8 in, and B, I don't think anyone in this world of ours
9 would have expertise to decipher and discern the various
10 issues that she wants to testify to. I mean, you
11 essentially want to put her on the witness stand and say
12 my son is innocent. That's exactly what you want her to
13 do. My son is innocent and I know because I am the mom.
14 You are not going to get that in the form of these
15 photographs you want to show. If you want to put her on
16 the stand and say her son is innocent, she needs to get
17 up and testify of his good character in the form of
18 character testimony.

19 ATTORNEY GROSS: She did have the
20 opportunity to review the DVD as well and pulled
21 pictures off based on what she had. Are they the
22 highest quality? No. Despite the expensive items we
23 have, the quality is not that great. However, that is
24 where she got her information from. Another way is to
25 get up on the stand and review and have them look at it,

1 still frame it. I don't want to mess up anything.

2 THE COURT: You know, do you have an
3 objection to that, look, still frame, and say that
4 doesn't look like my son?

5 ATTORNEY GROSS: Still frames you mean
6 from the DVD?

7 THE COURT: Yes.

8 ATTORNEY GROSS: It gets us there.

9 ATTORNEY KOBESKI: Well, I think she can
10 testify that doesn't look like my son and she can
11 testify that's not my son --

12 THE COURT: I agree. I mean, she can say
13 that's not my son if she presented alibi. She is not
14 presenting alibi here. She can get up and I think she
15 can look at the video and say that doesn't look like my
16 son.

17 ATTORNEY GROSS: I will let you know as
18 well, the walk on there, I believe she might say the
19 walk of the gentleman in that video is not her son
20 because he has a different swagger or limp to his walk.

21 THE COURT: That's fine.

22 ATTORNEY GROSS: So, do we have the
23 conclusion that she can testify? We'll roll the film
24 and let her watch and talk about her conclusions.

25 THE COURT: That doesn't look like my

1 son's walk, I don't see any problem with that.

2 ATTORNEY KOBESKI: The only issue I have
3 is one picture, that of the Defendant's mother which
4 looks like it was taken outside of the courthouse. My
5 issue with that particular photograph is, first of all,
6 her feet are cut off. You can't tell if she was
7 standing on anything, on tippy toes, what type of shoes
8 she is wearing. It is a different pole than the
9 pictures where the Defendant allegedly was -- where
10 allegedly the Defendant were taken. It's a different
11 view, different camera. I don't see how that
12 testimony --

13 THE COURT: It is actually an entirely
14 different perspective. If she had photographs taken
15 from the perspective of the video and the cameras, we
16 could tell. But, we know angle affects everything. If
17 you are looking from above and you have got someone
18 standing behind a fixed position, if you are looking up
19 here, it is a lot different than if you are looking
20 straight on, you have got someone looking straight on.
21 You can't tell unless you engage in some extremely
22 difficult mathematics that I am not capable of doing to
23 analyze whether or not the photographs taken from above
24 would have any relationship to the photograph of your
25 client's mom standing face on behind a pillar.

1 ATTORNEY GROSS: Your Honor, I too am
2 not skilled in the perspective analysis, which I think
3 is mathematical dimension.

4 THE COURT: Right.

5 ATTORNEY GROSS: However, speaking with
6 her, I also am presenting -- this is what he has
7 requested. I have advised my client's mother --

8 THE COURT: I think it is misleading to
9 the jury. I think it is not scientific. Therefore, it
10 would not assist the jury in the determination of the
11 photographs taken face on. There is no re-re-creation
12 of the way that the photographs were taken on that at
13 any time in question. So, therefore, it would only lead
14 to conjecture, speculation, et cetera, on the part of
15 the jury. And it would be misleading therefore to the
16 jury. So, I am not going to allow those to come in. I
17 would like you to make them part of the record so we
18 have a record of it. That way, you can preserve your
19 objection and have all the facts of record for
20 preservation of the objection. Okay.

21 ATTORNEY GROSS: Of the pictures?

22 THE COURT: No. These aren't the
23 photographs -- well, sure, we will make them part of the
24 record, too. I am specifically talking to the ones I
25 have included as being unscientific.

1 ATTORNEY GROSS: I will submit these
2 four that I will mark as Defendant's Exhibit Number 1.

3 THE COURT: Four photographs.

4 ATTORNEY GROSS: For the record, they
5 are.

6 THE COURT: Are you ready to proceed?

7 ATTORNEY GROSS: Ms. Eloise White.

8 THE COURT: Is your client going to
9 testify?

10 ATTORNEY GROSS: Mr. Ashford is not
11 going to testify. I don't think that has changed, if
12 you would colloquy him on that, both a decision of his
13 and mine.

14 THE COURT: Mr. Ashford, come forward,
15 please.

16 * * *

17 (Defendant's Exhibit Number 1 marked for
18 identification.)

19 * * *

20 THE COURT: Mr. Ashford, I have been told
21 by your attorney that you do not wish to take the
22 witness stand. Is that correct?

23 THE DEFENDANT: That's correct.

24 THE COURT: Can we place the Defendant
25 under oath.

* * *

KENNETH W. ASHFORD,

having been duly sworn according to law, testified as follows:

* * *

THE COURT: Okay, sir. Are you aware that you have a constitutional right to testify?

THE DEFENDANT: Yes.

THE COURT: And have you discussed the benefits and detriments of testifying with your attorney?

THE DEFENDANT: Yes.

THE COURT: And after those discussions, have you decided that you voluntarily wish to remain silent?

THE DEFENDANT: Yes.

THE COURT: Okay. Has anyone promised you anything in order to get you to waive your right to testify?

THE DEFENDANT: No.

THE COURT: Has anyone threatened or coerced you?

THE DEFENDANT: No.

THE COURT: Prior to coming in here today, did you have any drugs, alcohol, or anything of

1 an intoxicating nature?

2 THE DEFENDANT: No.

3 THE COURT: Do you understand what's
4 going on here today?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you have any questions for
7 me or your attorney before I accept your waiver?

8 THE DEFENDANT: Let me see. Then again,
9 I was threatened by my past record.

10 THE COURT: That's not someone
11 threatening you. That's being threatened by the
12 prospect of having your past record used against you if
13 you take the witness stand. What I am talking about,
14 has anybody threatened you with harm or violence or
15 anything along those lines in order to get you to waive
16 your right to counsel?

17 THE DEFENDANT: No.

18 THE COURT: Are you satisfied with the
19 representation of your counsel at this point in time?

20 THE DEFENDANT: I am going to say to a
21 certain extent, yes.

22 THE COURT: Do you wish to have
23 additional time with him to discuss the benefits or
24 detriments of your right to testify or do you believe
25 you are voluntarily waiving your right to testify?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE DEFENDANT: I am voluntarily.

THE COURT: I have a document that says,
"By signing this form, I acknowledge that I have a
constitutional right to testify. I have discussed with
my attorney the benefits and detriments of testifying.
And after said discussion, I voluntarily waive my right
to testify. Furthermore, by signing this form, I aver,"
which means I am stating, "that I was not promised
anything in return for waiving my right to testify, nor
was I forced to waive my right to testify." If you
could have him sign that.

ATTORNEY GROSS: May 12.

THE COURT: Okay. We will make that a
part of the record.

You may be seated. Thank you.

Bring the jury in.

* * *

(Jury entered the courtroom at 11:20
a.m.)

* * *

THE COURT: Attorney Gross.

ATTORNEY GROSS: Thank you, Your Honor.
Defense calls Eloise white to the stand, please.

* * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ELOISE WHITE,
called as a witness on behalf of the Defendant,
having been duly affirmed according to law, testified as
follows:

* * *

THE COURT: All right. You may proceed.

ATTORNEY GROSS: Thank you.

* * *

DIRECT EXAMINATION

BY ATTORNEY GROSS:

Q. Good morning, ma'am.

A. Good morning.

Q. Could you state your name and where you
presently reside.

A. My name is Eloise White. I reside at 1478
Whiteford Road, York, PA.

Q. 1740?

A. 2.

Q. And how long have you resided in York, ma'am?

A. Ever since '87, 1987.

Q. And ma'am, how are you related to Kenneth
Winston Ashford?

A. Kenneth is my son.

Q. How old is Kenneth?

A. Kenneth is 44 years old.

1 Q. And just so we are clear, is that the
2 gentleman seated to my left?

3 A. Yes.

4 Q. Ma'am, I want to bring you back to on or about
5 March 17 of 2008. Were you aware that your son was
6 arrested that evening?

7 A. Yes.

8 Q. And tell me, since that time, have you had the
9 opportunity to review a DVD depicting what's alleged to
10 be Kenneth trying to break into the courthouse?

11 A. Yes.

12 Q. About how many times have you reviewed that
13 DVD?

14 A. Oh, a number of times. About -- over 15
15 times.

16 Q. Were you present in court here today when that
17 DVD was played for the jury?

18 A. No, I wasn't.

19 Q. Would you be able to familiarize yourself with
20 that DVD if we, in fact, played it again?

21 A. Yes.

22 ATTORNEY GROSS: To that end, Your Honor,
23 could we ask that the lights be turned down and I
24 approach the media cart.

25 THE COURT: Yes.

* * *

(DVD played in open court.)

* * *

BY ATTORNEY GROSS:

Q. Ma'am, I have here a video that's playing. Do you recognize looking at this video?

A. Yes.

Q. And before we go any further, let me hit full screen 4. Is that better now?

A. Yes.

Q. Ma'am, when was the last time you actually looked at this video, if you can recall?

A. I think it was about three days ago.

Q. And please, try to speak into the microphone loudly so the jury can hear you as well as everyone else.

Ma'am, from looking at this video, were there certain areas that caused you to hesitate about the identity of the person in the video?

A. Yes.

Q. Is it past this point or did we already pass it?

A. Well, right at the door, the person is too big to be my son.

Q. Just now or do I have to go forward, ma'am?

1 A. It was right at the door. He was too big to
2 be my son.

3 Q. Do you desire me to go back?

4 A. Yes. Right there. And he also is a
5 lighter-skinned person than my son. Features are
6 different.

7 Q. When you were looking at this video, was it on
8 a personal computer or on a TV?

9 A. It was on a personal computer first. And then
10 it was on a big screen TV. And then it was on the
11 computer.

12 Q. Now, ma'am, I realize looking here at these
13 pictures, looking at this, this is just, for lack of a
14 better word, a blob. You cannot make out who that is in
15 that picture?

16 A. Not there, you can't.

17 Q. If you could tell me -- is it a little bit
18 further past this point -- where you were able to say
19 whether or not it might be an individual that is your
20 son?

21 A. He didn't look like my son.

22 Q. And ma'am, as you were looking through this
23 video, do you recall two times the person came to the
24 door?

25 A. Three times.

1 Q. Three times. Right there, ma'am, that we saw.

2 A. The face changes. It becomes a different
3 person.

4 Q. Is that mustache similar to your son's?

5 A. No.

6 Q. How does your son usually keep his facial
7 hair?

8 A. Neatly trimmed and --

9 Q. Similar to what he is donning here today in
10 court?

11 A. Yes.

12 Q. Did you take notice the shoes the gentleman
13 was wearing?

14 A. Yes. The person that was at the door had on
15 New Balance sneakers.

16 Q. Did you have an opportunity to pick your son
17 up that evening or that morning?

18 A. Yes.

19 Q. And what was he wearing?

20 A. He was wearing brown wolverine boots with
21 black soles.

22 Q. Those shoes that were shown, are they the same
23 shoes your son had on that morning?

24 A. No.

25 Q. Ma'am, have you ever looked at the VHS that

1 was recorded that evening?

2 A. No, I never saw it.

3 Q. Are you familiar with your son's walk and how
4 he moves, his mannerisms?

5 A. Yes.

6 Q. Are you able to comment about his mannerisms
7 if you saw it again or if you saw it the first time?

8 A. Are you talking --

9 Q. The VHS.

10 A. I never saw the VHS.

11 Q. Would you be able to pick out a walk similar
12 to your son's if you saw it?

13 A. Yes.

14 ATTORNEY GROSS: Your Honor, if I may, I
15 believe that the walking aspect is in the VHS as opposed
16 to the DVD. So, I will click out of this screen.

17 ATTORNEY KOBESKI: Before she can
18 testify that's his walk of the son, she has to talk --
19 she has to testify about how he walks.

20 THE COURT: I don't know how you explain
21 that. It is one of those that's not his walk.

22 ATTORNEY GROSS: We could give a brief
23 precursor not to elaborate.

24 THE COURT: Fine.

25 BY ATTORNEY GROSS:

1 Q. Ma'am, is there anything specific about your
2 son's walk that stands out from other folks?

3 A. Yes. He has a funny looking little walk. On
4 the DVD -- on the DVD, the person has long strides. My
5 son don't take long strides. He has a funny little
6 walk. I mean, I can tell his walk.

7 THE COURT: I don't know what you are
8 asking.

9 ATTORNEY GROSS: May we please switch
10 over to the VHS as opposed to the DVD.

11 THE COURT: I am not sure --
12 BY ATTORNEY GROSS:

13 Q. Ma'am, you mentioned your son has shorter
14 strides. Anything specific as far as movements of
15 shoulders or head that you take note to?

16 A. Well, I just can tell -- I can tell his walk.
17 And, you -- if I see, that's why I could tell the
18 difference in the DVD. I have never seen the VHS.

19 Q. It will be up in a moment, ma'am.

20 ATTORNEY KOBESKI: Your Honor, may we
21 approach before that VHS is played?

22 THE COURT: Yes.

23 * * *

24 (The following discussion occurred at
25 sidebar:)

1 ATTORNEY KOBESKI: I don't think she can
2 testify to that.

3 ATTORNEY GROSS: State it.

4 THE COURT: What?

5 ATTORNEY KOBESKI: Your Honor, I am
6 going to object to defense counsel playing the video and
7 having the witness testify whether or not that looks
8 like her son's walk. First of all, I believe that would
9 call for an expert opinion to say --

10 THE COURT: She is probably an expert on
11 her son's walk.

12 ATTORNEY GROSS: Reasonable
13 understanding. A person testifies to --

14 THE COURT: It has nothing to do with
15 intoxication.

16 ATTORNEY KOBESKI: Judge, I think it is
17 just -- I mean, I think it is misleading in that, I
18 mean, she wasn't there on the night in question.

19 THE COURT: It is not misleading. It is
20 not misleading. It is not misleading. She is creating
21 a defense. Now, what you need to do, you need to
22 cross-examine her on it. She saw one step from the DVD
23 and she was able to say. The fact of the matter is the
24 DVD was depicting the individual leaving when the police
25 arrived. I am sure his gait when the police arrived was

1 a lot different than his gait when he is having a cute
2 little walk.

3 Let's go through this. This was supposed
4 to be one day. How was this ever going to take one day?

5 ATTORNEY KOBESKI: We can squeeze it in.

6 THE COURT: You didn't think very well.

7 ATTORNEY GROSS: Start at nine and
8 finish at five.

9 THE COURT: She can testify to it. But,
10 be quick with the testimony, because what you are doing,
11 you are showing this video again and again and again.
12 In fact, the video was far better when you showed it
13 than when he showed it because there is a point where it
14 stopped and it looks like his face actually in the
15 video.

16 ATTORNEY GROSS: Why do you think I
17 jumped over it?

18 THE COURT: I understand that. But, I am
19 saying you need to quit showing the video. It is not
20 doing anyone any good.

21 (The discussion at sidebar was
22 concluded.)

23 * * *

24 BY ATTORNEY GROSS:

25 Q. Eloise, please focus on the screen. Do you

1 see the gentleman walking?

2 A. Yes.

3 Q. Please watch for a few moments. You have
4 never seen this before, ma'am. Is that correct?

5 A. No, I haven't.

6 Q. What you saw there on that video, this is from
7 March 17, 2008. The person depicted in that video, is
8 their walk similar to this which is exhibited by your
9 son? Does that look like your son's walk?

10 A. That's similar to my son's walk.

11 Q. Is that your son -- you can't tell that's your
12 son, can you?

13 A. No, I can't tell.

14 THE COURT: Did you say that was similar?

15 THE WITNESS: I said the walk was similar
16 to it.

17 THE COURT: It is similar to your son's
18 walk?

19 THE WITNESS: That one is similar.

20 BY ATTORNEY GROSS:

21 Q. What about the DVD?

22 A. The DVD is not the same walk because the DVD
23 is jumping, is like jumping. And when the person comes
24 around the pole there, they are striding and their toe
25 is turned up.

1 Q. So, the person that's walking and got
2 arrested, you're saying that's your son, their walk?

3 A. It looks like him, like his walk.

4 Q. The DVD, ma'am, you saw the DVD when the
5 person was walking?

6 A. Yes.

7 Q. Looks like your son?

8 A. Well, they jumped -- that one was jumping. I
9 can't tell that was his walk because they jumped. The
10 DVD, when it was cut, it was jumping. It wasn't, you
11 know, just walking. It was jump, jump, jump, jump. It
12 didn't -- it didn't really show the walk. Only time
13 they showed the walk was when the guy was coming around
14 the pole. And right when he is coming around the pole,
15 it stops, the face flashes, and you can see it is a real
16 light-skinned person when they are striding, walking
17 around the pole.

18 Q. Okay. And ma'am, looking at both of these,
19 ma'am, do you recognize an individual being your son,
20 Kenneth Ashford, in those pictures?

21 A. No. In the DVD, I don't. And on the VHS, the
22 walk, I'd have to look at it again, because you went
23 kind of fast there. But, it kind of -- kind of looked
24 like him when he walked there.

25 Q. The walk of the man that was walking up and

1 getting arrested?

2 A. Yes.

3 Q. What about the walk of the man that was in
4 front of the camera breaking into the courthouse?

5 A. No.

6 ATTORNEY GROSS: Thank you, ma'am.
7 Those are all the questions I have, Your Honor.

8 THE COURT: All right. Cross-examine.

9 * * *

10 CROSS-EXAMINATION

11 BY ATTORNEY KOBESKI:

12 Q. Ma'am, I am a little confused. You testified
13 just now that the person who was walking in the DVD
14 didn't look like your son's stride. Correct?

15 A. Right.

16 Q. But right before that, you testified that you
17 really couldn't tell what the stride was like in the DVD
18 because of the quality. It was kind of poor, jumping
19 around. Correct?

20 A. At certain points of it, you could see the
21 walk. It is a stride, long stride, wide strides.

22 Q. The DVD shows an individual walking from the
23 door to the police vehicle when it pulls up. Correct?

24 A. Yes. It's jumping.

25 Q. And that's when the police come up and arrest

1 the individual. Correct?

2 A. Yes. The DVD is jumping. The DVD that you
3 have, it jumps. It doesn't show the person really
4 walking. That just showed the person walking. But, the
5 DVD has the person jumping, jumping, like, it is
6 jumping. It is not smooth.

7 THE COURT: Ma'am, listen to the
8 question. Because of the quality, that's what you are
9 talking about, jumping. The individual is not jumping.
10 It's the quality of the DVD that makes it look like he
11 is jumping. Is that correct?

12 THE WITNESS: Yes.

13 THE COURT: Okay. Proceed.

14 ATTORNEY KOBESKI: Thank you.

15 THE COURT: Please don't let her testify
16 in the narrative.

17 ATTORNEY KOBESKI: Yes, Judge.

18 BY ATTORNEY KOBESKI:

19 Q. Ma'am, you weren't present behind the
20 courthouse on March 17, 2008, were you?

21 A. No, I wasn't.

22 Q. You can't explain why your son was arrested
23 behind the courthouse near the doors, can you?

24 A. Well, I was informed --

25 Q. Ma'am, you personally can't explain. You have

1 no personal knowledge of why your son was arrested on
2 that night. Correct?

3 A. Correct.

4 Q. Now, you testified when you were watching the
5 DVD that the individual who came up to the door had on
6 New Balance sneakers.

7 A. Yes.

8 Q. Now, how are you able to 100 percent say they
9 are New Balance sneakers, because they look like brown
10 boots to me?

11 THE COURT: Counsel, I don't want to hear
12 your testimony.

13 ATTORNEY KOBESKI: Can I bring the
14 picture back up?

15 THE COURT: That's fine. But, I don't
16 want to hear your testimony in the case. You are not a
17 witness in this case.

18 BY ATTORNEY KOBESKI:

19 Q. Ma'am, do you see that picture? Do you see
20 the feet of the individual?

21 A. I can hardly see it. I can hardly see that.

22 Q. Do those look like New Balance sneakers to
23 you? I will let it play. Tell me when you see New
24 Balance sneakers.

25 THE COURT: Better get your hand on the

1 pause button then.

2 BY ATTORNEY KOBESKI:

3 Q. Do you see New Balance sneakers there?

4 A. You have to wait until it turns to the side
5 and gets ready to walk off. Pause it then and you will
6 see the New Balance sneakers. And when he kneels down
7 at the door with the screwdriver or whatever they have,
8 you will see it then.

9 Q. Ma'am, if you could tell me when to pause when
10 you see the New Balance sneakers.

11 A. When he kneels down is when you are able to
12 see them.

13 THE COURT: Are there any more
14 appearances in this?

15 ATTORNEY KOBESKI: Yes, Your Honor, in a
16 moment.

17 THE WITNESS: Okay.

18 THE COURT: Do you want him to stop?

19 THE WITNESS: As soon as the shoes show,
20 you can stop it.

21 THE COURT: You need to tell him when the
22 shoes show.

23 THE WITNESS: All right. Okay.

24 BY ATTORNEY KOBESKI:

25 Q. So, you are telling me from that view --

1 A. I missed it. It is when his foot was out.

2 Q. I apologize, ma'am.

3 A. Okay.

4 Q. You are telling me that from that, you can
5 tell that's a New Balance sneaker?

6 A. Maybe zoom it. See, I had video that you
7 could zoom it in. You could zoom it in. My big screen.

8 Q. No, ma'am. I am asking you, ma'am, from this
9 can you tell that's a New Balance sneaker?

10 A. Yes. When you zoom it, if you zoom it in, you
11 can tell it is a New Balance sneaker. It has on the
12 toe, it has like black, like black mesh, and on the side
13 it has the N on it. And around the top, it has the dark
14 rim around the top of his shoes and on the bottom of it.

15 Q. Let me stop that right there. That doesn't
16 look like a brown boot to you?

17 A. No.

18 Q. What kind of equipment do you have?

19 A. I have a big screen TV and I have --

20 Q. Well, ma'am, you would agree this is a pretty
21 big screen TV, wouldn't you?

22 A. I'd say the screen has poor color, because you
23 could tell on the photos that there was more color in
24 the photos that was taken. And my big screen is
25 clearer. And when it is paused and it is zoomed in, you

1 can see the different faces and everything on it.

2 Q. You didn't bring any equipment with you today.

3 Correct?

4 A. I couldn't bring it. If possible -- if I
5 could have, if somebody would adjourn to my house, I
6 could show it to them.

7 Q. Ma'am, you testified that the features on the
8 individual in the DVD look different than the features
9 on your son. Correct?

10 A. The person that's in this video has different
11 features from my son. And they have lighter skin than
12 my son.

13 Q. Let me ask you this --

14 A. And they are bigger than my son.

15 Q. You said specifically the facial features are
16 different. Correct? You said the individual in the DVD
17 has a mustache. Does your son not have a mustache?

18 A. There is one picture in the DVD --

19 Q. Ma'am, that's not my question. Does your son
20 have a mustache?

21 A. My son has a mustache.

22 Q. Thank you. What, aside from the mustache and
23 the lighter skin as you allege, is different about the
24 facial features that you see on this DVD?

25 A. On the DVD, when the person is running down by

1 the trash cans, if you stop it, pause it and zoom it,
2 you see the person doesn't have a mustache, nor does he
3 have glasses. And the clothes on the person in this DVD
4 changes.

5 Q. Ma'am, I asked you about the facial features.
6 Please listen to my questions and answer my questions.

7 THE COURT: Counsel, I need to control
8 the witness. When she doesn't appropriately answer, you
9 need to interrupt and ask me to caution her. What you
10 are doing is asking her questions, allowing her to
11 testify in the narrative and stopping her at the
12 conclusion of her answer.

13 ATTORNEY KOBESKI: I apologize.

14 BY ATTORNEY KOBESKI:

15 Q. Ma'am, aside from the mustache and lighter
16 skin, what other different facial features does your son
17 have from the person in the video, specifically?

18 A. What different facial features?

19 Q. Yes.

20 A. The one person, they have a pug nose, a short
21 nose, a pug nose.

22 Q. Your son --

23 A. They have a bushy mustache.

24 Q. Which your son doesn't have?

25 A. Exactly.

1 Q. And a pug nose, which your son doesn't have.

2 Correct?

3 A. Exactly.

4 ATTORNEY KOBESKI: Your Honor, I don't
5 have anything else.

6 THE COURT: Any redirect?

7 ATTORNEY GROSS: One question.

8 * * *

9 REDIRECT EXAMINATION

10 BY ATTORNEY GROSS:

11 Q. Ma'am, is this video, this DVD, like the DVD
12 you had a copy of?

13 A. Yes.

14 ATTORNEY GROSS: Thank you. That's all
15 I have.

16 THE COURT: All right. Just to
17 reiterate, ma'am. The person depicted in the VCR tape
18 that's walking away from the doors and getting arrested
19 by the corporal, that individual has the same stride
20 that your son does. Correct?

21 THE WITNESS: When it is shown on the
22 VHS?

23 THE COURT: Yes.

24 THE WITNESS: It looks like my son.

25 THE COURT: Okay.

1 THE WITNESS: On the DVD, it is jumping,
2 like I said.

3 THE COURT: Okay. I just wanted to ask
4 you about the VHS. Okay. You may step down.

5 Can I put the lights on?

6 ATTORNEY KOBESKI: Yes.

7 ATTORNEY GROSS: I have no objection.

8 Yes.

9 THE COURT: Any additional witnesses?

10 ATTORNEY GROSS: No further witnesses or
11 evidence, Your Honor. Just ask that the evidence that
12 had been submitted be of record.

13 THE COURT: Okay. Any objection?

14 ATTORNEY KOBESKI: No, Your Honor.

15 THE COURT: We will make those items of
16 record. They are Defendant's Exhibits what?

17 ATTORNEY GROSS: 1.

18 THE COURT: The photographs?

19 ATTORNEY GROSS: Yes.

20 THE COURT: They have already been made a
21 part of the record.

22 Ladies and gentlemen, we are going to
23 take a break at this point in time. I am going to
24 release you for lunch until 1:30. I want to caution you
25 do not discuss this matter with anyone, nor should you

1 allow anyone to discuss it in your presence. If someone
2 does discuss it in your presence or solicit to discuss
3 it, let my tipstaff know immediately and we'll inquire
4 into that.

5 Wear your juror badges prominently when
6 you go out to lunch. Today is market day. When you go
7 to the market, wear it prominently so anyone who works
8 in the courthouse will know to steer clear from any
9 conversation in your presence, hopefully.

10 Have a good lunch, ladies and gentlemen.

11 * * *

12 (Jury left the courtroom at 11:55 a.m.)

13 * * *

14 (The following discussion occurred in
15 open court out of the presence of the jury:)

16 * * *

17 THE COURT: Any specific jury
18 instructions you want me to pull for either of your
19 cases?

20 ATTORNEY GROSS: Missing evidence as it
21 pertains to the gloves.

22 ATTORNEY KOBESKI: I think that was
23 explained.

24 THE COURT: It was explained. However,
25 that's not the key for missing evidence. I will take a

1 look at it and see. Please remind me of that when we
2 get back.

3 Anything else?

4 ATTORNEY GROSS: We are going to be
5 asking for the charge for the simple trespass, that the
6 instruction for simple trespass must be included as
7 well. I think it fairly arises from the evidence as
8 presented thus far.

9 THE COURT: Okay. Counsel.

10 ATTORNEY KOBESKI: It is lesser
11 included, I believe. So, I believe that would be
12 proper.

13 THE COURT: I don't believe so, but I
14 will take a look at it. I don't think it is a lesser
15 included of criminal trespass. What's the cite for
16 criminal trespass?

17 ATTORNEY KOBESKI: 3503.

18 ATTORNEY GROSS: Defiant trespass, (b).

19 THE COURT: Do you want defiant trespass
20 (b) to be given?

21 ATTORNEY GROSS: Yes.

22 THE COURT: Not (b)(1)?

23 ATTORNEY GROSS: (b)(1) -- well, I mean,
24 I would love to -- I think that would be for you, Your
25 Honor, as a summary offense.

1 THE COURT: I just want to make sure what
2 you are asking me to give, because --

3 ATTORNEY GROSS: It would have to be
4 defiant trespass.

5 THE COURT: The criminal trespass -- what
6 you are doing, you are adding an additional charge. I
7 don't think it is lesser included, because criminal
8 trespass specifically requires entry by subterfuge into
9 any building or occupied structure or separately secure
10 or occupied portion thereof; whereas, the person who
11 commits the offense of defiant trespass knowing that he
12 is not licensed or privileged to do so enters or remains
13 in any place. That does not include the building. So,
14 your client technically could be found guilty of the
15 offense of walking out on that property and getting on
16 the loading dock. And they thereafter can also be
17 guilty of the criminal attempt criminal trespass because
18 they are not lesser included. One is an occupied
19 structure or separately secured, maintained portion
20 thereof. It is akin to a lesser included of burglary.
21 The only missing thing is with intent to commit a crime
22 therein. And the same cannot be said for defiant
23 trespass. If I walk on that loading dock, I am not
24 committing criminal trespass, but I can if it is
25 properly posted be guilty of defiant trespass.

1 ATTORNEY GROSS: It really cuts -- even
2 argument, Your Honor, because we do have signs at the
3 courthouse that have been alluded to, but no evidence of
4 trespassing when a person is not there for their
5 ordinary business. And usually, loitering and prowling
6 would be involved. However, I am not going to sit here
7 and ask for other --

8 THE COURT: I don't think it is
9 appropriate under the circumstances. I don't think it
10 is lesser included. If you want me to add it, I will
11 add it. I think what can happen is he can be found
12 guilty of that as well as criminal attempt criminal
13 trespass because we do have some testimony, one of the
14 deputies said, yes, it is posted out there. You said
15 when was it posted. He said I don't recall exactly, but
16 I think it was here when they built the place.

17 ATTORNEY GROSS: which for my client's
18 sake, if he were found guilty of both, the sentences
19 could then run consecutive to one another based on R Fel
20 status. That could bring you up to an additional nine
21 months in jail.

22 THE COURT: I am not sure what those
23 numbers would extrapolate.

24 ATTORNEY GROSS: More than just --

25 THE COURT: Yes.

1 ATTORNEY KOBESKI: I apologize. He was
2 charged under criminal trespass, Subsection (a)(1)(ii),
3 not the (i). It was breaking into a building. But I
4 believe the same argument would apply, just for
5 clarification.

6 THE COURT: Yes. If he is convicted of
7 both of them, I am going to sentence him separately.
8 That's the point, because they are not lesser included.
9 There is no merger issue.

10 ATTORNEY GROSS: The answer is leave it
11 as it is.

12 THE COURT: All right. That's what I
13 will do. We'll see you at 1:20.

14 * * *

15 (Luncheon recess taken from 12:00 noon
16 until 1:30 p.m.)

17 * * *

18 AFTER RECESS

19 * * *

20 THE COURT: Are we ready for closing
21 statements?

22 ATTORNEY GROSS: I think you wanted us
23 to remind you about the missing evidence instruction.

24 THE COURT: Yes.

25 ATTORNEY GROSS: Only issue is it's

1 going to be cumulative.

2 THE COURT: That's an argument for the
3 jury. If the item is available to that party and not to
4 the other, which I don't know the answer to that.
5 Second, that it appears the item contains or shows
6 special information material to the issue. And third,
7 the item would not be merely cumulative. So, I will
8 give you the instruction. You can argue it.

9 ATTORNEY GROSS: Okay.

10 THE COURT: Are we ready?

11 ATTORNEY GROSS: I believe so.

12 THE COURT: Bring the jury in, please.

13 * * *

14 (Jury entered the courtroom at 1:35 p.m.)

15 * * *

16 THE COURT: Folks, has anyone overheard
17 anything about this case or been solicited to discuss
18 this case over the lunch hour?

19 (No response.)

20 THE COURT: We are going to proceed to
21 closing statements at this point in time.

22 You may close.

23 ATTORNEY GROSS: Thank you, Your Honor.

24 May it please the Court, Attorney
25 Kobeski, ladies and gentlemen of the jury. Like I said,

1 this case would not take terribly long, and there we
2 are. It is about a day.

3 Before I begin, I just want to remind you
4 of the oath that you took prior to being placed on this
5 jury and the promises that you made, listen to the
6 evidence, weigh the evidence, and, most importantly,
7 follow the instructions from the Judge.

8 Everything that you are going to need to
9 make the determination in this case came from the
10 witness stand and the evidence presented also from the
11 overhead. It is your choice to take into account
12 everything and either believe some of the evidence, none
13 of the evidence, or believe it all. It is strictly up
14 to you. And that's the job that you have, all 12 of you
15 together.

16 Now, in this case, it is very
17 straightforward. My client, Kenneth Ashford, is charged
18 with attempting to commit a burglary. And the Judge
19 will give you the instructions. But, basically, did he
20 attempt, namely, did he make a substantial step to
21 making the commission of that crime possible. Did he
22 attempt to break in, to gain access to, go into the
23 courthouse in the early morning hours of March 17, 2008.

24 And also, you are going to have to decide
25 whether or not the courthouse is a building. No

1 surprise, it is. This is a building.

2 As well, did he intend to commit a crime
3 therein? That's the area I suspect where the issue is
4 going to be, what was the intent of Mr. Ashford, if you
5 believe the person at the door was Mr. Ashford based on
6 the evidence presented, namely, the light complexion,
7 the gloves, can we see his face, all those different
8 areas. If you don't believe it was Mr. Ashford, the
9 inquiry is over. It is not him. Move on. Acquit Mr.
10 Ashford. If you believe that that may have been Mr.
11 Ashford at the door, then you can look at and decide
12 what was the intent.

13 Now, we heard evidence that there were
14 computers that you could see from the windows outside
15 the back of the courthouse. However, what you saw up
16 there on the video, that tells the story. It is your
17 recollection of what the video depicts that night in the
18 dark. It is for you. You have to decide what was the
19 intent of somebody to go inside. Was it an attempt?
20 Then you think attempt at what. All we see was the
21 garbage can, the scanning machine, garbage can,
22 computers, and the scan equipment that no one can pick
23 up.

24 You look at Mr. Ashford. By the
25 statement of Corporal Brady, five foot three. A figure

1 was there. An intent to commit a crime therein if you
2 believe Mr. Ashford was the person outside at the door
3 at the back of the courthouse.

4 We can concede the person walking away
5 from the VHS that was arrested by Corporal Brady was Mr.
6 Ashford. His mother took the stand, Eloise White, and
7 said, you know, that has the walk, looks similar to my
8 son. She knew he was arrested that night. We don't
9 have a problem with that. Yep, that was him that was
10 arrested.

11 The issue is at the door, who was there.
12 There are breaks in the evidence. We have Deputy
13 Brenneman watching it from inside. There were lapses in
14 what he saw. But, even he while watching it can say I
15 don't know if it is Mr. Ashford or not. He just saw
16 somebody with a black hoodie and a pair of jeans walking
17 around the courthouse and near the door.

18 We also have Corporal Brady. He saw Mr.
19 Ashford. Why? Because he arrested him. He said get
20 down. Mr. Ashford is right there. He shows up as he
21 saw my client walking away from the back of the
22 courthouse.

23 You have to keep in mind as well the
24 screwdriver. This is not like one of those cases from
25 CSI where we have these analyses on the screwdriver. We

1 just have a screwdriver, kind of clear with red on it,
2 flat-head screwdriver. Not found in my client's
3 possession. Found at the back door and actually
4 underneath the back door, because I guess someone came
5 out and pushed the door open causing the dragging. And
6 it pushed it back open once the deputy came out and
7 pushed that back. That's what we have.

8 The only thing found on my client, Mr.
9 Ashford, were a pair of glasses, a few identification
10 cards as was described in the property record. He also
11 had a hat, pair of gloves.

12 The question that you might have is these
13 gloves. The gloves that were used in the alleged
14 commission of this crime, where are they? My client has
15 no control over that. They are not here. I don't know
16 where they went. It is not our burden. The burden is
17 on the Commonwealth. You might have to consider why
18 aren't those gloves here. Again, the judge will give
19 you an instruction on that. At that point, what could
20 they prove or disapprove in this case?

21 Also, the hat. Did you hear any evidence
22 about the hat being tested for DNA? Nothing really to
23 say that was my client. You might say, yeah, well, I
24 saw the video of him getting arrested. Right from
25 square one, you can tell the issue has been that was not

1 me. What tells the story on whether or not it is you,
2 DNA. We have heard nothing on that.

3 Next issue is criminal trespass. You
4 have to decide whether that person at the back of the
5 courthouse on that early March 17 morning, whether or
6 not that was Mr. Ashford and did he attempt, did he take
7 a substantial step to break into, to gain access to the
8 courthouse. And also, did he have a right to be there
9 at that time. That's for you to decide as a jury.

10 I submit from the pictures that most
11 likely will be going out with you when you deliberate --
12 you saw four pictures of the door, if I may.

13 ATTORNEY KOBESKI: Yes.

14 ATTORNEY GROSS: Thank you, sir.

15 These pictures right here, they will be
16 going with you as you deliberate. But, we see -- you
17 see scratches up and down on this door. You are also
18 going to see that the major scratch, dent or impression
19 is located right in the middle of the handles on the
20 door. If you are looking at the video, where was that
21 person jimmying that screwdriver? At the bottom of the
22 door and also on top of the handles up top. That's
23 where that motion was from what was shown on the film.
24 And if a person was sticking a screwdriver in two
25 heavy-duty doors, is that really enough to take that

1 step to breaking into a secure facility? I submit that
2 it was not.

3 We also have possession of an instrument
4 of a crime. The Commonwealth is alleging that my
5 client, Mr. Kenneth Ashford, possessed an instrument of
6 a crime, namely, the screwdriver. And the judge will
7 give you the law on that point. And you might think it
8 rather ridiculous that a screwdriver could be part of a
9 crime, but he will explain to you the letter of the law,
10 that this item right here, that screwdriver, that it was
11 utilized in this case to facilitate the commission of a
12 crime. And just the mere fact that somebody may or may
13 not have it and use it in a manner that would make the
14 crime possible to happen as opposed to, it might help,
15 but that it was necessary for a person to break into the
16 courthouse, I submit that it was not. It's a
17 screwdriver, a screwdriver that has no prints on it and
18 a screwdriver that was not found in my client's
19 possession. That being said, I would ask that you find
20 him not guilty of that charge.

21 And then finally, we have institutional
22 vandalism. Again, is this an institution. I will make
23 it easy for you, yes, it is. This is an institution.
24 It is a courthouse. But, did my client, Mr. Kenneth
25 Ashford, knowingly damage the courthouse in his access

1 that night? There are a lot of marks on that door. A
2 lot of things go in and out of that door. Who knows
3 what caused those damages. And you see somebody on the
4 video and they are fiddling with an item at the door,
5 but there is no direct proof that he caused that damage
6 and what amount. You heard testimony that they used the
7 loading dock for larger items. But, also, especially on
8 that morning, Corporal Brady said that maintenance lets
9 in individuals for the vending machines, sodas and
10 candies when they are coming in. You have to determine
11 from your own experience what people use to bring in
12 items of the vending type, namely, sodas and candy,
13 chocolates, larger cases. Things go in and out of
14 there, equipment. Anything could happen to those doors.
15 To say beyond a reasonable doubt it was Mr. Ashford,
16 that clearly is not present. We would ask that you find
17 him not guilty on that point. The Commonwealth has not
18 proven their case beyond a reasonable doubt.

19 You hear that over and over, beyond a
20 reasonable doubt. And Judge Kelley will explain to you
21 it is not beyond all doubt, it is not to a mathematical
22 or scientific principle as far as doubt. It is strictly
23 if a reasonable person in a matter of importance in
24 their life which causes them hesitation, causes them to
25 take a moment before they act, that's reasonable doubt.

1 And a great example is buying a house. You don't have
2 to jump into it. You think about it, speak to your
3 spouse if you have one, weigh the options. And before
4 you sign on the dotted line for your mortgage and your
5 note, you are going to make some decisions, do I have
6 enough bathrooms, enough bedrooms, acreage, give or
7 take. You weigh it over. And if you choose not to act
8 or buy that house based on everything in front of you,
9 that's reasonable doubt.

10 And in this case, there are a few items
11 that I suspect create that doubt. First and foremost,
12 looking at the DVD, especially the fixed DVD, we have a
13 person in a black hooded sweatshirt and a pair of jeans.
14 Okay. wonderful. Person on there has gloves on. You
15 also see their face from time to time throughout. The
16 face is a light-colored individual. And you can also
17 see the lighting conditions out there as well, which I
18 think is more impressive from our standpoint from the
19 other DVD, on the one that's controlled from the toggle
20 switch. Mr. Ashford, well, you see him. What color is
21 he? Is that the same color of the individual who was
22 depicted on that DVD? I suspect it is not. Even if you
23 are looking at a video from this distance, can you prove
24 beyond a reasonable doubt that that person in that video
25 is him? I suspect that it is not.

1 Also, what happened during that period of
2 time where Officer Brenneman got up and let Corporal
3 Brady out? There is no other camera showing who else
4 may have been around that area. We heard evidence that
5 people do walk through there at all hours. This is the
6 time where bars would let out. We don't know who else
7 is around. Could somebody else be wearing a black
8 sweatshirt and pair of jeans? That's for you to decide.
9 That's not mine. That's yours.

10 However, we have evidence presented that
11 the person who was walking away toward the police car
12 and arrested was Mr. Kenneth Ashford. At that point,
13 what was he doing illegal? I am going to say nothing.
14 You also heard that it took a few times for him to
15 comply to get down to the ground. Again, roll the
16 video. What could you see? He was told to get down.
17 He got down. He was arrested, bottom line.

18 Throughout everything here, you have to
19 realize, and I would ask that you call upon your own
20 experiences, what one person sees isn't what another
21 person sees. It doesn't mean they are lying. It just
22 means their perspective is different than someone
23 else's.

24 In this case, we have Mr. Ashford. He
25 was out around the back of the courthouse. There is no

1 evidence tying him to a screwdriver. The deputies
2 cannot say for sure that was him, especially Mr.
3 Brenneman who was watching him the entire time.

4 We have missing evidence, namely, the
5 gloves.

6 We also have damage to the door that's
7 depicted in these pictures that's not in the area that
8 you see on the film of where that damage should have
9 been. Is there another person that did this? I don't
10 know. Was it the man that slapped into it with crates
11 of soda? I don't know either. But, right there would
12 be reasonable doubt as pertains to Mr. Ashford.

13 So, I would ask that when you take all of
14 this information together, respect one another's
15 opinions. Respect your own perspective of what you have
16 seen. And I am sure not all 12 of you are looking at
17 the exact same -- in the exact same way at that video.
18 Have respect for one another.

19 And I would ask throughout all of this,
20 why in the world would somebody try to break into the
21 courthouse? And also, think to yourself, has the
22 Commonwealth proved beyond a reasonable doubt that the
23 facility, the place is not open to the public. We heard
24 nothing about the front door of the courthouse being
25 closed. Do the courthouse people come in at 3:00 in the

1 morning? That's for you to decide.

2 But, I would ask that when you weigh all
3 the evidence together that you would come back and find
4 my client not guilty of criminally attempting to break
5 in to commit a burglary inside the courthouse, that he
6 attempted to commit criminal trespass of the courthouse,
7 that he possessed an instrument of a crime because it is
8 a screwdriver. If someone wants to break in, they break
9 in with many other things. You can see, is that an
10 instrument of crime? Also, find him not guilty of
11 institutional vandalism for causing maybe possibly a
12 mark on the door, which, according to the evidence, is
13 not real specific on where it is. So, I'd ask that you
14 go back, respect one another, and come back with a
15 verdict of not guilty for my client.

16 Thank you.

17 ATTORNEY KOBESKI: May it please the
18 Court, Attorney Gross. When each of you walked into the
19 courthouse yesterday and today, no one told you to leave
20 your common sense at the doors. In fact, it is urged
21 that jurors do use their common sense when they are
22 deliberating the case, which you guys will be doing very
23 shortly.

24 with that being said, it is your job to
25 determine, first, who was the person in the video that

1 you watched; and second, what was the person in the
2 video doing.

3 First things first, there should be zero
4 doubt in your mind that the person that you saw in the
5 video was, in fact, that man, the Defendant. Deputy
6 Brenneman testified yesterday that he did not lose sight
7 of the suspect, whoever that may be, at any point in
8 time. He said he moved for two seconds to let Corporal
9 Brady out, but he still didn't lose sight of that person
10 in the video, not once. And he watched this suspect
11 until he was taken into custody by Corporal Brady. The
12 person that Corporal Brady took into custody, there is
13 no question about that, it was the Defendant, Mr.
14 Ashford.

15 There is no wiggle room here, members of
16 the jury. There is no argument. There was no one even
17 in the same vicinity as the Defendant in the early
18 morning hours of March 17th. Maybe if there was someone
19 else that was in the video or they saw someone else back
20 there when they were arresting the Defendant, then maybe
21 there is an argument. But, there was no one else there.
22 No wiggle room. The person on that video was Kenneth
23 Ashford.

24 Now, what was the Defendant doing back
25 there? That's the next question. You are permitted to

1 infer what the Defendant was thinking, what the
2 Defendant was intending to do through what is called
3 circumstantial evidence. Now, no matter what each of
4 you have seen on TV shows or what you have heard on TV
5 shows, circumstantial evidence does not necessarily mean
6 that it is bad evidence. In fact, most criminals do not
7 walk around telling everyone what they are thinking and
8 what they are intending to do. However, that would make
9 my job easier. It just didn't happen. Criminals just
10 don't do that.

11 Circumstantial evidence is used all the
12 time to prove the intent of a particular defendant. And
13 in this case, I submit to you that the circumstantial
14 evidence in this case proves what the Defendant's intent
15 was in the early morning hours of March 17, last year.

16 Let's look at what we know didn't happen
17 in this case. Again, the Defendant did not go to the
18 back doors of the courthouse and Corporal Brady didn't
19 start talking out loud. Oh, I am damaging this door
20 with this screwdriver. I am possessing this screwdriver
21 and I am using it in this criminal endeavor I am on.
22 why am I prying on the door? I am trying to get inside
23 even though I have no permission to get in here. When I
24 get inside, I will steal and leave. You can infer all
25 of those things from the circumstantial evidence that's

1 present in this case.

2 The Defendant, first of all, went to the
3 back doors of the courthouse and he didn't go to the
4 front doors. He didn't try to get buzzed in. What does
5 that tell you? He was trying to open the door with a
6 screwdriver. Do people who think they have permission
7 to be in a place go to the back door and try to open it
8 with a screwdriver? No. You heard testimony that the
9 courthouse was not open to the public. It is Monday
10 through Friday, I believe 8:00 to 4:30. And by that
11 point, it was not open to the public. Using a
12 screwdriver to get inside. He knew he didn't have
13 permission to be there.

14 why would he come at 3:00 in the morning?
15 Think about it, ladies and gentlemen. It is dark
16 outside. He knew no one could see him. He knew there
17 would be no other people around. No, there was no other
18 people from the bars. It was a Sunday night going into
19 Monday morning. Bars are not open on Sunday night.
20 That's common sense.

21 The Defendant, as you saw in the video,
22 tried to cover up his face the best he could. Couldn't
23 really see much, except his eyes, a little bit of his
24 chin, maybe his cheeks. Why would he do that? So no
25 one could identify who he was. He was trying to cover

1 it, conceal himself, because he knew what he was doing
2 was a crime.

3 You heard Deputy Brenneman testify that
4 the Defendant was looking through the windows of the
5 Sheriff's Office. Whether or not the Defendant knew it
6 was the Sheriff's Office at the time, who knows. What
7 would he see? The lights were turned on. The blinds
8 were open. Dark outside. You could see clearly into
9 the building. Cubicles. Lots and lots of electronic
10 equipment, computers, personal items in each cubicle, I
11 should say. The Defendant saw what he wanted to take.

12 You also heard testimony that at the back
13 doors, you could look in. There is a safe. It is not
14 some huge gigantic safe as Attorney Gross indicated.
15 You heard the testimony. It is a small safe. Maybe it
16 is heavy, maybe it is not. What's usually in the safe?
17 Valuables. You see a safe, you want it. As soon as he
18 saw it, he tried to pry the door open.

19 Ladies and gentlemen, you may be asking
20 yourself how can we know for sure, how can we know for
21 certain what the Defendant was intending to do when he
22 was trying to pry the door open. He didn't say it out
23 loud. We don't know by direct evidence. We have to
24 infer his intent was that he was trying to pry open the
25 door and trying to get inside. A person doesn't try to

1 pry open the door unless they want to get inside. There
2 shouldn't be any issue as to that. The only issue was
3 what he was going to do once he got inside.

4 Members of the jury, remember the video.
5 Remember what the Defendant did immediately prior to
6 prying open the door. What was that? Looking in the
7 windows. Looking around making sure no one could see
8 him. He saw, as I said, computers, electronic
9 equipment, personal effects. It is not rocket science.
10 The Defendant saw what he wanted and he tried to take
11 it. Fortunately for us, he got caught in the process.
12 It may not seem like a smart thing to do. Why would
13 someone want to break into the courthouse? Members of
14 the jury, the criminal doesn't have to pass an IQ test.
15 It may not seem like the smartest thing to do.

16 Now, this is a multi-million dollar
17 building that you guys are seated in, I am standing in.
18 This is a gold mine. There is an endless amount of
19 possibility for someone to steal. Tons of items to
20 take. It is a gold mine. Again, maybe not the smartest
21 thing to do, but I submit that man didn't have to pass
22 an IQ test to be a criminal.

23 Ladies and gentlemen, bear with me for a
24 moment. Let's assume all the facts in this case are the
25 same except for the building. So, the Defendant was

1 caught and substitute the courthouse with a home. Okay.
2 Doesn't have to be your home or my home, just a
3 hypothetical home. All the same facts. That 3:00 in
4 the morning, the Defendant dressed all in black at the
5 back door of a home with a screwdriver trying to get in
6 and he is caught before he can get inside. I think it
7 is safe to say we can all agree that the Defendant was
8 attempting to burglarize that home. Just because this
9 is a courthouse doesn't make it any different.

10 Now, in any attempt case, you have to
11 infer what the intent is, because by its very nature it
12 is an attempt to complete a crime. Should the sheriff
13 have let the Defendant continue to open the door and run
14 in here and steal a computer, steal the safe, and not
15 arrest him until he was running outside? No. That
16 doesn't make any sense. In Pennsylvania, there is a
17 crime of attempt. And there is a reason for that. If a
18 crime could be prevented, not only is society better
19 off, but it is still a crime. So, if someone is going
20 to see someone about to commit a crime, they are going
21 to try to stop it. It is common sense. That's their
22 job on a daily basis. That's their job. So, they are
23 supposed to stop it.

24 Did he make a substantial step? He sure
25 did. Not only was he there looking through windows, but

1 he took the next step. He took this out, this flat-head
2 screwdriver, which would be perfect to put in the
3 crevices of the door. He was trying to pry it open.
4 You saw him. If that's not a substantial step, I don't
5 know what is, ladies and gentlemen.

6 This really is a straightforward case.
7 On March 17 of 2008, the Defendant committed four
8 offenses. I am going to ask you to find him guilty of
9 committing all those offenses.

10 Thank you.

11 THE COURT: Okay. Ladies and gentlemen,
12 the next portion of the trial is the portion where I
13 give you the instructions on the law to be applied
14 during the course of your deliberations.

15 First and foremost, I think it probably
16 would behoove you to select one of you to be the
17 foreperson. He or she is the one who will announce the
18 verdict in open court. Also, that person can act kind
19 of as a stimulator of conversation, take any votes that
20 are necessary, kind of get you involved in the analysis
21 of the evidence.

22 I have a verdict slip for you, which will
23 assist you by listing the offenses the Defendant has
24 been charged with. It simply says guilty or not guilty
25 of each offense, and you will circle either guilty or

1 not guilty. And they are not depending upon each other.
2 They are not mutually exclusive. You go through each
3 one and analyze and determine whether or not the
4 Commonwealth has sustained their burden. Then at the
5 very bottom, you will each sign your signature. Okay.

6 Now, let me give you the offenses the
7 Defendant has been charged with. And they are criminal
8 attempt to commit the offense of burglary, criminal
9 attempt to commit the offense of criminal trespass,
10 possession of an instrument of crime, and institutional
11 vandalism.

12 The accused in this case is charged with
13 the offense of criminal attempt -- or the crime of
14 criminal attempt to commit burglary. A person may be
15 guilty of the crime even if the ultimate goal of the
16 crime is not actually achieved if his or her conduct
17 meets the test of being an attempt to commit a crime.
18 The crime in this case the Defendant is accused of
19 attempting to commit is the crime of burglary. To be
20 guilty of completing that crime, the following elements
21 must be proven: First, that the Defendant entered into
22 a location; second, that the Defendant entered into the
23 location with the intent to commit a crime; third, that
24 the location was not open to the public at the time; and
25 fourth, that the Defendant did not have permission or

1 lawful authority to enter.

2 okay. So, for this case, for the offense
3 to be actually committed, a person has to have done
4 those things. Okay. Again, I will go through them.
5 First, that the Defendant entered into a location;
6 second, that the Defendant entered the location with the
7 intent to commit a crime inside; third, that the
8 location was not open to the public at the time; and
9 fourth, that the Defendant did not have permission or
10 lawful authority to enter. And the final thing is that
11 the location is a building or structure that is not
12 adapted for overnight accommodations, but in which a
13 person was present at the time of entry by the
14 Defendant. Okay. Okay. So, it has to be a building or
15 structure that had a person present at the time.

16 Now, that is the consummated crime of
17 burglary. But, in order for a defendant to be found
18 guilty of attempt, you must find the following things
19 for the conduct to be sufficient to constitute -- I am
20 having trouble.

21 In order for a conduct to be sufficient
22 to constitute an attempt to commit a crime, you need to
23 have the following factors to be present: First, that
24 the Defendant did a certain act; second, that the
25 Defendant did the act with the intent to commit the

1 crime of burglary; and third, that the act constituted a
2 substantial step towards the commission of the crime of
3 burglary. Okay.

4 So, you know what burglary was. I told
5 you what that is. Now, to commit the offense of
6 attempted burglary, you need to prove that the Defendant
7 did a certain act; second, that the Defendant did the
8 act with the intent to commit the crime of burglary; and
9 third, that the act was a substantial step towards the
10 commission of the crime of burglary. Okay. It was a
11 substantial step toward the actual commission of the
12 crime.

13 Let me address the issue of intent. A
14 person cannot be guilty of attempt to commit a crime
15 unless he or she had a firm intent to commit the crime.
16 If he or she has definitely not made up their mind,
17 their purpose uncertain or wavering, he or she lacks the
18 type of intent that is a requirement for an attempt.

19 Let me now discuss the issue of a
20 substantial step, because remember, there has to be a
21 substantial step toward the commission of a crime. A
22 person cannot be guilty unless he or she does an act
23 that constitutes a substantial step towards the
24 commission of the crime. An act is a substantial step
25 if it is a major step toward the commission of the

1 crime, and it also strongly corroborates the jurors'
2 belief that the person at the time he or she did the act
3 had a firm intent to commit that crime. An act can be a
4 substantial step even though other steps would have to
5 be taken before the crime could actually be carried out.

6 If you are satisfied that the three
7 elements of attempt to commit burglary have been proven
8 beyond a reasonable doubt, you should find the Defendant
9 guilty. Otherwise, you should find the Defendant not
10 guilty.

11 And again, attempt to commit burglary,
12 which is the Defendant was attempting to enter into a
13 location that at the time he was attempting to enter the
14 location he had the intent to commit a crime inside,
15 that at the time he was attempting to enter the location
16 the location was not open to the public; and fourth,
17 that the Defendant did not have permission or lawful
18 authority to enter the structure he was trying to get
19 into; and fifth, that it was a building or structure
20 that while not adapted for overnight accommodations,
21 there were persons present at the time. So, that's the
22 first offense.

23 The next offense is criminal attempt to
24 commit criminal trespass. The accused in this case is
25 charged with the crime of criminal attempt to commit

1 criminal trespass. A person may be guilty of the crime
2 even if the ultimate goal of the crime is not achieved
3 if his or her conduct meets the test of being an attempt
4 to commit the crime.

5 The crime in this case, as I told you,
6 the Defendant is accused of attempting to commit is
7 criminal trespass. To be guilty of the crime of
8 criminal trespass, the following elements must be proven
9 beyond a reasonable doubt. This is the actual
10 consummated crime. Again, I have got to give you the
11 definition of the crime so you can determine whether or
12 not there was an attempt. First, that the Defendant
13 broke into or entered into a location. This includes
14 gaining entry by deception or secretly remaining in
15 place. Broke into includes entrance by force, breaking,
16 intimidation, unauthorized opening of locks or picking
17 of locks or forcing of locks, or through any -- or
18 entering in through any opening not designed for human
19 access. I think that's in case you have like a dog door
20 or something. It is not something that was made for
21 human access. Second, that the Defendant knew that he
22 did not have permission or lawful authority to enter
23 into the location or to break into the location. Third,
24 that the location was a building or occupied structured
25 or separately secured or occupied portion thereof.

1 An occupied structure is any structure,
2 vehicle or place adapted for overnight accommodation of
3 persons or for carrying on business inside whether or
4 not it was actually occupied at the time.

5 The Defendant could not be guilty of
6 criminal trespass if you find that the location was open
7 to the public at that time or that the location was
8 abandoned or that the Defendant reasonably believed that
9 the owner of the location would have permitted him to
10 enter.

11 So, that's the consummated crime of
12 criminal trespass.

13 And the Defendant -- just to kind of
14 point it out to you, because I think this is the easiest
15 way to point out the difference, the difference between
16 burglary and criminal trespass is, in burglary, the
17 Commonwealth has to prove that someone had an intent to
18 commit a crime. With criminal trespass, you don't have
19 to prove that. You just have to prove that someone
20 broke into a structure.

21 Okay. And again, for the crime of
22 criminal attempt to commit criminal trespass to be
23 consummated, you must find that the Defendant did a
24 certain act and that the Defendant did the act with the
25 intent to commit the crime of criminal trespass. And

1 third, that the act constituted a substantial step
2 towards the commission of the crime of criminal
3 trespass.

4 Again, let me address the issue of
5 intent. A person cannot be guilty of an attempt to
6 commit a crime unless he or she had a firm intent to
7 commit that crime. If he or she has definitely not made
8 up their mind, their purpose uncertain or wavering, he
9 or she lacks the type of intent that is a requirement
10 for an attempt. That's the problem. I am saying intent
11 and attempt at the same time.

12 Let me now discuss the issue of
13 substantial step. A person cannot be guilty of an
14 attempt to commit a crime unless he or she does an act
15 that constitutes a substantial step towards the
16 commission of the crime. An act is a substantial step
17 if it is a major step towards the commission of the
18 crime and also strongly corroborates the jurors' belief
19 that the person at the time he or she did the act had a
20 firm intent to commit that crime. An act can be a
21 substantial step even though other steps would have to
22 be taken before the crime could be carried out.

23 If you are satisfied that the three
24 elements of the attempt have been proven beyond a
25 reasonable doubt, then you should find the Defendant

1 guilty. Otherwise, you must find the Defendant not
2 guilty.

3 okay. Those are the two initial
4 offenses. And now I want to move on to the next two
5 offenses. And hopefully, they are a little bit easier
6 to comprehend than those last two.

7 The next two offenses the Defendant has
8 been charged with is possessing a criminal instrument
9 and institutional vandalism.

10 With regards to the possessing a criminal
11 instrument, in order to find the Defendant guilty of
12 possessing a criminal instrument as charged, you must be
13 satisfied that the following three elements have been
14 proven beyond a reasonable doubt: First, that the
15 Defendant possessed a certain item. It is specifically
16 alleged here to be a screwdriver. Second, that the item
17 was an instrument of crime. An instrument of crime is
18 in this case specially made for criminal use or in this
19 case specially adapted for criminal use or anything that
20 is used for criminal purposes and possessed by the
21 Defendant at the time of the alleged offense under
22 circumstances not manifestly appropriate for lawful uses
23 to have. That a thing could somehow facilitate the
24 possible commission of a crime is not enough; to be an
25 instrument of crime, the thing must be something that

1 the Defendant would need to use or use in the commission
2 of the underlying offense. Third, that the Defendant
3 possessed the instrument with the intent to employ it
4 criminally, that is, with the intent to attempt or to
5 commit a crime with it.

6 The Commonwealth has charged here that
7 the crime the Defendant intended to commit with the
8 instrument alleged, that is the screwdriver, was the
9 offense of burglary or criminal trespass. Okay. And
10 just to kind of boil it down for you, because I know
11 sometimes these instructions can be extremely verbose,
12 which is why I have sometimes difficulty tripping over
13 them, it is any instrument that is adapted for use in
14 the commission of a crime whether it is specially
15 adapted for use in the commission of a crime or it is
16 just adapted by the way and manner that it is used.
17 Okay. But, it has to be possessed for the purpose of
18 using it during the crime.

19 Let me give you an example. If I have a
20 license to carry a firearm, me possessing the firearm is
21 perfectly legal. Okay. Nothing illegal about it.
22 Therefore, I can't be convicted of the crime of
23 possession of an instrument of crime. On the other
24 hand, let's say I am walking into the bank with a note
25 in my hand that says give me all your money, this is a

1 stickup, and I have got a gun in my belt and I also have
2 a license to carry the gun, okay, under those
3 circumstances, that gun, even though it could have been
4 lawfully possessed by me in any other set of
5 circumstances, in this set of circumstances, you might
6 find that I possessed it for the purpose of using it in
7 the armed robbery. This is a stickup. Okay. So, even
8 though you have an item that otherwise could be lawful,
9 if you are using it in such a way to facilitate the
10 crime and your intent was to use it in the facilitation
11 and commission of a crime, then you can be guilty of the
12 offense of possessing criminal instruments. Okay.

13 The last offense the Defendant has been
14 charged with is the offense of institutional vandalism.
15 The Defendant has been charged with institutional
16 vandalism. To find the Defendant guilty of this
17 offense, you must find that the following elements have
18 been proven beyond a reasonable doubt: First, that the
19 Defendant vandalized or defaced or damaged a certain
20 piece of property which was either a church, a
21 synagogue, or a facility or place used for religious
22 worship or other religious purposes, or a cemetery or a
23 mortuary, a facility used for the purpose of burying or
24 memorializing the dead, a school, an educational
25 facility, a community center, a municipal building, or a

1 courthouse facility, or a state or legal government
2 building, or a juvenile detention center, et cetera, et
3 cetera. Okay. The key here is, ladies and gentlemen,
4 the courthouse is an institution under this statute
5 because it is specifically listed as such.

6 The issue for you to determine is that
7 the Defendant actually defaced or damaged the property.
8 Okay. To desecrate means to deface, damage, pollute, or
9 otherwise physically mistreat a place or thing in a way
10 that the alleged desecrator knows will outrage the
11 sensibilities of persons who are likely to observe or
12 discover his or her actions. To outrage the
13 sensibilities of other persons does not simply mean to
14 cause discomfort to viewers who -- I'm sorry. I gave
15 you the wrong -- that was an additional instruction for
16 another offense. My apologies. That's for desecration
17 of an institution.

18 Let me go back and read this for you
19 again. My apologies, everyone.

20 For the offense of institutional
21 vandalism, you must find the Defendant vandalized,
22 defaced or damaged certain property, okay, and that the
23 property was, among other things, a courthouse facility.
24 Okay. And that's it. There is another offense where
25 you actually desecrate certain places, but that's not

1 obviously alleged here. So, my apologies. And you must
2 find that the Commonwealth has proven that offense
3 beyond a reasonable doubt.

4 Those are the offenses that you are to
5 consider. And again, they are listed here in the
6 verdict slip, the four offenses, and it says guilty or
7 not guilty of those various offenses.

8 Now, let me give you instructions on the
9 way and manner in which you are to conduct your
10 deliberations.

11 A fundamental principle of our system of
12 criminal law is that the Defendant is presumed to be
13 innocent. The mere fact that he was arrested and is
14 accused of a crime is not any evidence of the
15 Defendant's guilt.

16 Furthermore, the Defendant is presumed
17 innocent throughout the trial and unless and until you
18 conclude, based upon careful and impartial consideration
19 of the evidence, that the Commonwealth has proven the
20 Defendant guilty beyond a reasonable doubt. It is not
21 the Defendant's burden to prove that he is not guilty.
22 Instead, it is the Commonwealth that always has the
23 burden of proving each and every element of the crime
24 charged and that the Defendant is guilty of that crime
25 beyond a reasonable doubt. A person accused of a crime

1 is not required to present any evidence or prove
2 anything in his or her own defense. If the Commonwealth
3 fails to meet that burden, then your verdict must be not
4 guilty. On the other hand, if the Commonwealth's
5 evidence does meet its burden, then your verdict should
6 be guilty.

7 Although the Commonwealth has the burden
8 of proving the Defendant guilty, this does not mean the
9 Commonwealth must prove its case beyond all doubt or to
10 a mathematical certainty, nor must it demonstrate the
11 complete impossibility of innocence.

12 A reasonable doubt is a doubt that would
13 cause a reasonably careful and sensible person to pause
14 and hesitate or refrain from acting upon a matter of
15 highest importance in his or her own affairs. A
16 reasonable doubt must fairly arise out of the evidence
17 that was presented or out of the lack of evidence that
18 was presented with regard to some element of each of the
19 crimes charged. A reasonable doubt must be a real
20 doubt. It may not be an imagined doubt, nor may it be a
21 doubt manufactured to avoid carrying out an unpleasant
22 duty.

23 To summarize, you may not find the
24 Defendant guilty based upon a mere suspicion of guilt.
25 The Commonwealth has the burden of proving the Defendant

1 guilty beyond a reasonable doubt. If it meets that
2 burden, then the Defendant is no longer presumed
3 innocent and you should find him guilty. And, if the
4 Commonwealth does not meet its burden, then you must
5 find the Defendant not guilty.

6 The evidence in this case is of two
7 different types. On the one hand, there is direct
8 evidence, which is testimony by a witness from his or
9 her own personal knowledge, such as something he or she
10 saw or heard. An example of this would be if I were to
11 walk outside right now and as I was walking outside and
12 looked up in the sky and saw it was raining and I put my
13 hand out and felt that it was raining, I would come in
14 and take the witness stand, take the oath and say,
15 ladies and gentlemen, I walked outside and it is
16 raining. That's direct evidence. That's based upon my
17 observations. Direct evidence are direct observations
18 that I am testifying to.

19 On the other hand, if I were to talk
20 about circumstantial evidence, circumstantial evidence
21 would be if I walked out the same door, walked out and
22 saw puddles on the corner, saw a lady across the street
23 that was wiping away the last remnants of rain or what
24 appeared to be rain off the top of her umbrella and I
25 saw a couple of cars going by and they were doing the

1 last rotations with their windshield wipers, but I
2 looked up in the sky and it was not raining, I could
3 come in here and I can take the witness stand and take
4 the oath and say, ladies and gentlemen, I think it was
5 raining. I think it just rained. I don't have any
6 direct evidence. I can't tell you I saw it raining, but
7 what I can tell you is these observations that I had.
8 Those observations are circumstantial evidence of my
9 testimony that it is had just stopped raining. Each
10 little nugget is a little piece of circumstantial
11 evidence that I am using to support my ultimate
12 proposition that I walked outside and it had just
13 rained.

14 Okay. And now, the key for
15 circumstantial evidence is, and you heard it when I gave
16 you the instructions, in most of these instances we need
17 to show what a defendant's intent was, what they were
18 thinking, what their thought process was. It is what in
19 the law we call the mens re. That's the mind of the
20 individual who is doing the things. For instance, just
21 to give you one example, and I don't want to draw
22 attention to this offense, but remember with regard to
23 burglary, the Commonwealth must prove that the Defendant
24 was doing the act to get into the courthouse to commit a
25 crime inside. Okay.

1 Now, we can't tell what a person's intent
2 is because people don't walk around with cartoon bubbles
3 over their head saying I am thinking this or I am
4 thinking that. The way we look at what a person's
5 intent is we are looking at their actions. Generally
6 speaking, in the absence of someone saying this is what
7 I am going to do, the way we look at what their intent
8 is we are looking at their actions. And some of the way
9 we can do that is by looking at the circumstantial
10 evidence. Their actions are circumstantial evidence of
11 what their intent was. Okay.

12 The key for you, ladies and gentlemen, is
13 not whether or not circumstantial evidence is good or
14 bad. The key for you with regard to circumstantial
15 evidence of a person's intent is whether or not the
16 quality and quantity of that evidence supports the
17 ultimate proposition. With the example I gave you, it
18 is whether the quantity and quality of the observations
19 I made when I walked outside support the proposition
20 that it had just stopped raining.

21 As judges of the facts, you are the sole
22 judges of the credibility of the witnesses and their
23 testimony. This means you must judge the truthfulness
24 and accuracy of each witness's testimony and decide
25 whether to believe all, part or none of their testimony.

1 The following are some of the factors
2 that you may and should consider when judging
3 credibility and deciding whether or not to believe
4 testimony.

5 Was the witness able to see, hear, or
6 know the things about which he or she testified?

7 How well could the witness remember or
8 describe the things about which he or she testified?

9 Was the ability of the witness to see,
10 hear, know, remember, or describe those things affected
11 by youth, old age, or by any physical, mental, or
12 intellectual deficiency?

13 Did the witness testify in a convincing
14 manner? How did he or she look, act, and speak while
15 testifying? Was his or her testimony uncertain,
16 confused, self-contradictory, or evasive?

17 Did the witness have any interest in the
18 outcome of the case, any bias, prejudice, or other
19 motive that might affect his or her testimony?

20 How well does the testimony of a witness
21 square with the other evidence in the case, including
22 the testimony of other witnesses? Was it contradicted
23 or supported by the other testimony and evidence? Does
24 it make sense?

25 If you believe some part of the testimony

1 of a witness to be inaccurate, consider whether the
2 inaccuracy casts doubt upon the rest of his or her
3 testimony. This may depend on whether he or she has
4 been inaccurate in an important matter or in a minor
5 detail and on any possible explanation. For example,
6 did the witness make an honest mistake or simply forget
7 or did he or she testify in a deliberate or false
8 fashion?

9 Now, you note I told you this previously,
10 the Defendant did not take the witness stand in this
11 case. It is entirely up to the defendant in every
12 criminal trial whether or not to testify. He has an
13 absolute right founded on the Constitution to remain
14 silent. You must not, and I am telling you for the
15 third time, draw any inference of guilt or any other
16 inference adverse to the Defendant from the fact that he
17 did not testify in this case.

18 There is a question about what weight, if
19 any, you should give to the failure of the Commonwealth
20 to produce the gloves in this case as potential evidence
21 in the trial.

22 If three factors are present, and there
23 is no satisfactory explanation for the party's failure
24 to produce an item, the jury is allowed to draw a common
25 sense inference that the item would have been

1 unfavorable to that party. The three necessary factors
2 are, first, the item is available to that party, the
3 party who didn't produce it and no other; second, that
4 the item contains special information material to the
5 issue; and third, the item would not merely be
6 cumulative evidence.

7 Therefore, if you find these three
8 factors present, and there is no satisfactory
9 explanation for the Commonwealth's failing to produce
10 the gloves, you may infer, if you choose to do so, that
11 it would have been evidence unfavorable to the
12 Commonwealth.

13 If you decide that a witness deliberately
14 testified in a false fashion about a material point,
15 that is about a matter that could affect the outcome of
16 the trial, you may, for that reason alone, choose to
17 disbelieve the rest of his or her testimony, but are not
18 required to do so. You should not only consider the
19 deliberate falsehood, but all other factors bearing on
20 the witness's credibility in deciding what to believe.

21 You should not decide the case on which
22 side had the greater number of witnesses or the greater
23 amount of evidence. Instead, you should decide which
24 witnesses to believe and which evidence to accept on the
25 basis of whether or not the testimony or evidence is

1 believable.

2 In deciding which of the several
3 witnesses to believe, it is proper for you to consider
4 whether or not the testimony of each witness is
5 supported by other evidence in the case. However, you
6 should recognize that it is entirely possible for a
7 single witness to give truthful and accurate testimony
8 and that his or her testimony may be believed even
9 though a greater number of witnesses of apparently equal
10 reliability contradicted him or her. The question for
11 you to decide, based upon all the considerations I am
12 discussing with you, is not which side produced the most
13 evidence, but which evidence you believe.

14 speeches of counsel are not part of the
15 evidence and you should not consider them as such.
16 However, in deciding the case, you should very carefully
17 consider the evidence in light of the various reasons
18 and arguments each lawyer presented. It is the right
19 and duty of each lawyer to discuss the evidence and in a
20 manner that is most favorable to the side he or she
21 represents. You should be guided by each lawyer's
22 argument to the extent they are supported by the
23 evidence and insofar as they aid you in applying your
24 own reason and common sense. However, you are not
25 required to accept the arguments of either lawyer. It

1 is for you and you alone to decide the case based upon
2 the evidence as it was presented from the witness stand
3 and in accordance with the instructions I am now giving
4 you.

5 Before you retire to decide this case,
6 I'd like to provide you with some final guidelines for
7 the way in which you conduct your deliberations and how
8 you may properly arrive at your verdict.

9 It is my responsibility to decide all
10 questions of law. Therefore, you must accept and follow
11 my rulings and these instructions on matters of law. I
12 am not, however, the judge of the facts. It is not for
13 me to decide what the true facts concerning the charges
14 against the Defendant are. You, the jurors, are the
15 sole judges of the facts. It will be your
16 responsibility to consider the evidence, to find the
17 facts and, applying the law to the facts as you find
18 them, to decide whether the Defendant has been proven
19 guilty beyond a reasonable doubt.

20 Your decision in this case, as in every
21 case you hear, is a matter of considerable importance.
22 Remember that it is your responsibility as jurors to
23 perform your duties and to reach a verdict based upon
24 the evidence as it was presented during trial. However,
25 in deciding the facts, you may properly apply your own

1 common sense and draw upon your own everyday knowledge
2 of life as each of you has experienced it. You should
3 keep your deliberations free of any bias or prejudice.
4 Both the Commonwealth and the Defendant have a right to
5 expect you to consider the evidence conscientiously and
6 to apply the law as I have outlined it to you.

7 In arriving at your verdict, you should
8 not concern yourselves with any future consequences of
9 your verdict, including what the penalty might be if you
10 were to find the Defendant guilty. As I told you
11 previously, the question of guilt and the question of
12 penalty are decided separately.

13 Upon retiring to deliberate, you should
14 select one of you to be the foreman. He or she is the
15 one who will announce the verdict in the courtroom after
16 you have finished deliberating upon your verdict.

17 Your verdict must be unanimous. That
18 means in order to return a verdict, each of you must
19 agree to it. You have a duty to consult with each other
20 and to deliberate with a view towards reaching an
21 agreement if it can be done without doing any violence
22 to your own individual judgment. Each of you must
23 decide the case for yourself, but only after there has
24 been impartial consideration with your fellow jurors.
25 In the course of your deliberations, each of you as

1 jurors should not hesitate to reassess your original
2 views if convinced that your original opinion was
3 erroneous. However, no juror should surrender an honest
4 conviction as to the weight and effect of the evidence
5 merely because of the opinion of your fellow jurors or
6 for the mere purpose of returning a verdict.

7 Let me suggest to you in closing that I
8 think you will best be able to deliberate if you treat
9 the opinions and arguments of your fellow jurors in the
10 same fashion and manner that you want your own opinions
11 to be treated.

12 Counsel, any additions?

13 ATTORNEY KOBESKI: No, Your Honor.

14 ATTORNEY GROSS: No, Your Honor.

15 THE COURT: Okay. Let me give you the
16 verdict slip.

17 And the two alternates, I am going to
18 thank you very much for your service in this case. We
19 are going to release you at this time.

20 And we will release the jury to begin
21 deliberating on your verdict. We'll await your
22 decision, ladies and gentlemen. Okay.

23 * * *

24 (Jury retired to deliberate at 2:30 p.m.)

25 * * *

1 THE COURT: Anything to go out?

2 ATTORNEY KOBESKI: I do, Judge. I would
3 like for the -- well, I am sure the pictures.

4 ATTORNEY GROSS: That's correct.

5 ATTORNEY KOBESKI: I don't think the
6 screwdriver is necessary. But, I would like -- I
7 believe they have the VHS. And I would like to send the
8 videos back.

9 THE COURT: The video? Do we have a DVD
10 player back there?

11 ATTORNEY GROSS: I think we do.

12 THE COURT: Does that play, the DVD
13 player --

14 ATTORNEY KOBESKI: It just plays on a
15 computer.

16 THE COURT: So, the VHS player we do
17 have. Okay. Any objection?

18 ATTORNEY GROSS: The only issue, I
19 guess, I think it is important to have the DVD as well.

20 THE COURT: That's fine, but I don't have
21 a personal computer.

22 ATTORNEY GROSS: I understand.
23 Therefore, I would oppose having the VHS go out.

24 THE COURT: Okay. I guess no one is
25 going to come up with the idea, okay, judge, I will get

1 a computer.

2 ATTORNEY KOBESKI: I will.

3 THE COURT: Okay. There we go. Geez,
4 this isn't rocket science, guys. There was a time the
5 court didn't provide any of the playing instrumentality.
6 okay.

7 ATTORNEY KOBESKI: Yes.

8 THE COURT: So, the VHS can go back, as
9 can the DVD, as can the screwdriver, as can the
10 photographs.

11 ATTORNEY GROSS: I don't believe they
12 asked for the screwdriver.

13 THE COURT: Why not? They are not going
14 to stab each other with it.

15 ATTORNEY GROSS: I have no objection to
16 anything else, no other evidence.

17 THE COURT: Okay. They will all go out.
18 Photographs, the DVD, the VCR. Tell the jurors that
19 they can expect a computer for the DVD. And the
20 screwdriver.

21 * * *

22 (Jury entered the courtroom at 3:55 p.m.)

23 * * *

24 THE COURT: You may take the jury
25 verdict.

1 THE CLERK: Ladies and gentlemen of the
2 jury, have you agreed upon a verdict?

3 THE JURY: We have.

4 THE CLERK: who shall speak for you?

5 THE FOREPERSON: I will. My name is
6 Martha Tassia.

7 THE CLERK: What say you in the issue
8 joined between the Commonwealth of Pennsylvania and
9 Kenneth Winston Ashford, the Defendant, do you find the
10 Defendant guilty or not guilty criminal attempt
11 burglary?

12 THE FOREPERSON: Guilty.

13 THE CLERK: Do you find the Defendant
14 guilty or not guilty of criminal attempt criminal
15 trespass, break into structure?

16 THE FOREPERSON: Guilty.

17 THE CLERK: Do you find the Defendant
18 guilty or not guilty of possession of instruments of
19 crime?

20 THE FOREPERSON: Guilty.

21 THE CLERK: Do you find the Defendant
22 guilty or not guilty of institutional vandalism?

23 THE FOREPERSON: Guilty.

24 THE CLERK: Ladies and gentlemen of the
25 jury, hear your verdict as the Court has recorded it,

1 you found the Defendant guilty of criminal attempt
2 burglary, guilty of criminal attempt criminal trespass,
3 break into structure, guilty of possession of
4 instruments of crime, guilty of institutional vandalism,
5 and so say you all?

6 THE JURY: Yes.

7 THE COURT: Counsel, anything?

8 ATTORNEY GROSS: No. We do not wish to
9 poll the jury.

10 THE COURT: Thank you very much.

11 We'll make the jury verdict slip a part
12 of the record. I see the foreperson has endorsed her
13 signature on it, and everyone else has endorsed their
14 signature.

15 Ladies and gentlemen, you may be seated.
16 I want to thank you very much for your service in this
17 case as jurors. I am going to return you to the Central
18 Jury Room. You are excused for the day. You are to
19 return tomorrow to the Central Jury Room.

20 If I don't see you for the remainder of
21 the week, I want to thank you very much for your service
22 during the course of the week and giving your time to
23 the County of York. We couldn't do our jobs unless
24 there are individuals like yourselves to perform this
25 very important function.

1 Thank you very much, and drive safely.
2 (The jury left the courtroom at 3:57
3 p.m.)

4 THE COURT: Mr. Ashford, come forward,
5 please. Mr. Ashford, the Court also finds that the
6 Commonwealth has sustained its burden in proving you
7 guilty beyond a reasonable doubt of the offense of
8 criminal mischief, summary offense.

9 okay. It looks like I am not going to be
10 able to do sentencing in this case until July. I'm
11 pretty backed up.

12 ATTORNEY GROSS: Let me just explain.
13 You have to be sentenced within 60 days. However,
14 because of the Court's schedule, do you oppose
15 sentencing occurring more than 60 days from today's
16 date?

17 THE DEFENDANT: Not if I can be
18 transferred back to --

19 ATTORNEY GROSS: I am not sure if that's
20 going to happen, because you have to have a pre-sentence
21 investigation performed upon you.

22 THE COURT: It would be much longer than
23 60 days any way. I am looking at -- actually, it would
24 be less than 60 days. My apologies. But, it won't be
25 until July.

1 ATTORNEY GROSS: That's the way it is.

2 THE COURT: The Court hereby schedules
3 sentencing for Monday, July 6, 2009, at 9:30 a.m.

4 The Court also orders a full pre-sentence
5 investigation, including a recommendation in this case.

6 ATTORNEY GROSS: And, Your Honor, as
7 well, my client actually posted bail on the 17th of
8 March, 2008. We are asking, and if you wish, I'll make
9 a follow-up with a written motion, but we'd like to make
10 an oral motion to revoke his bail nunc pro tunc at this
11 time.

12 THE COURT: Do you have any objection to
13 his bail being revoked?

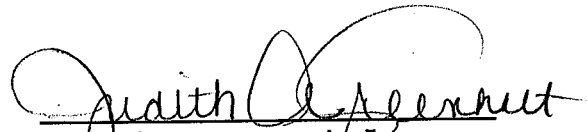
14 ATTORNEY KOBESKI: None.

15 THE COURT: The Defendant's bail is
16 hereby revoked. He is remanded to await sentencing.

17 (The proceedings were concluded.)
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I hereby certify that the proceedings and evidence and charge are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.


Judith A. Greenholt, RPR
Official Court Reporter

IN THE COURT OF COMMON PLEAS OF YORK COUNTY,
PENNSYLVANIA



COMMONWEALTH : CP-67-CR-0002467-2008
VS :
KENNETH W. ASHFORD :

York, Pa., Tuesday, May 12, 2009

Before the Honorable Thomas H. Kelley, VI, Judge

APPEARANCES:

JUSTIN F. KOBESKI, Esquire
Assistant District Attorney
For the Commonwealth

RONALD J. GROSS, Esquire
For the Defendant

* * *

VERDICT

(The jury entered the courtroom at 3:55
p.m.)

THE COURT: You may take the jury
verdict.

THE CLERK: Ladies and gentlemen of the
jury, have you agreed upon a verdict?

RECEIVED/FILED
YORK COUNTY
JUDICIAL CENTER
2009 MAY 21 PM 3:18
DOH O'SHELL
CLERK OF COURTS

THE JURY: We have.

THE CLERK: Who shall speak for you?

THE FOREPERSON: I will. My name is Martha Tassia.

THE CLERK: What say you in the issue joined between the Commonwealth of Pennsylvania and Kenneth Winston Ashford, the Defendant, do you find the Defendant guilty or not guilty criminal attempt burglary?

THE FOREPERSON: Guilty.

THE CLERK: Do you find the Defendant guilty or not guilty of criminal attempt criminal trespass, break into structure?

THE FOREPERSON: Guilty.

THE CLERK: Do you find the Defendant guilty or not guilty of possession of instruments of crime?

THE FOREPERSON: Guilty.

THE CLERK: Do you find the Defendant guilty or not guilty of institutional vandalism?

THE FOREPERSON: Guilty.

THE CLERK: Ladies and gentlemen of the jury, hear your verdict as the Court has recorded it, you found the Defendant guilty of criminal attempt burglary, guilty of criminal attempt criminal trespass, break into structure, guilty of possession of

instruments of crime, guilty of institutional vandalism, and so say you all?

THE JURY: Yes.

THE COURT: Counsel, anything?

ATTORNEY GROSS: No. We do not wish to poll the jury.

THE COURT: Thank you very much.

We'll make the jury verdict slip a part of the record. I see the foreperson has endorsed her signature on it, and everyone else has endorsed their signature.

Ladies and gentlemen, you may be seated. I want to thank you very much for your service in this case as jurors. I am going to return you to the Central Jury Room. You are excused for the day. You are to return tomorrow to the Central Jury Room.

If I don't see you for the remainder of the week, I want to thank you very much for your service during the course of the week and giving your time to the County of York. We couldn't do our jobs unless there are individuals like yourselves to perform this very important function.

Thank you very much and drive safely.

(The jury left the courtroom at 3:57 p.m.)

THE COURT: Mr. Ashford, come forward, please. Mr. Ashford, the Court also finds that the Commonwealth has sustained its burden in proving you guilty beyond a reasonable doubt of the offense of criminal mischief, summary offense.

Okay. It looks like I am not going to be able to do sentencing in this case until July. I'm pretty backed up.

ATTORNEY GROSS: Let me just explain. You have to be sentenced within 60 days. However, because of the Court's schedule, do you oppose sentencing occurring more than 60 days from today's date?

THE DEFENDANT: Not if I can be transferred back to --

ATTORNEY GROSS: I am not sure if that's going to happen, because you have to have a pre-sentence investigation performed upon you.

THE COURT: It would be much longer than 60 days any way. I am looking at -- actually, it would be less than 60 days. My apologies. But, it won't be until July.

ATTORNEY GROSS: That's the way it is.

THE COURT: The Court hereby schedules sentencing for Monday, July 6, 2009, at 9:30 a.m.

The Court also orders a full pre-sentence investigation, including a recommendation in this case.

ATTORNEY GROSS: And, Your Honor, as well, my client actually posted bail on the 17th of March, 2008. We are asking, and if you wish, I'll make a follow-up with a written motion, but we'd like to make an oral motion to revoke his bail nunc pro tunc at this time.

THE COURT: Do you have any objection to his bail being revoked?

ATTORNEY BORTNER: None.

THE COURT: The Defendant's bail is hereby revoked. He is remanded to await sentencing.

jag - 5/19/09

IN THE COURT OF COMMON PLEAS OF YORK COUNTY,
PENNSYLVANIA



COMMONWEALTH	:	CP-67-CR-0002467-2008
	:	
VS	:	
	:	
KENNETH W. ASHFORD	:	

PROOF OF SERVICE

On 5/19/09, I the undersigned served the
Order dated 5/12/09 in this matter by personal
service upon each of the following offices:

York County Clerk of Courts Office
a) Original
b) Copy for private defense counsel/pro se
defendant to be served by Clerk

York County District Attorney's Office

Judge Thomas H. Kelley, VI

York County Adult Probation Department

Judith A. Greenholt, RPR
Official Court Reporter

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

COMMONWEALTH

: CR-2467-2008

VS.

: CRIMINAL LAW

KENNETH W. ASHFORD

:

AND NOW, this _____ day of _____, 2009, upon the herein motion for arrest of judgment presented, it is hereby order that a hearing on the merits is scheduled for the _____ day of _____, 2009, before the honorable _____, to be held in court room # _____, at _____ a.m./p.m., in the York judicial center located at 45 n. George street, York, pennslvania, 17401.

BY THE COURT

J.

IN THE COURT OF COMMON PLEAS YORK COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

Commonwealth of Pennsylvania

vs.

no.cp-67-cr-2467-2008

Kenneth w. Ashford

MOTION FOR ARREST OF JUDGMENT

AND NOW on this _____ day of _____, 2009, comes the defendant Kenneth w. Ashford, who present the following facts:

1. the defendant was arrested on march 17, 2008, and charged with several charges related to an attempt to break into the York, pa. county courthouse.
2. on may 12, 2009, the defendant was convicted by an jury of criminal intent to commit burglary, criminal intent to commit criminal trespass, possession of instrument of crime, institutional vandalism, and criminal mischief.
3. the verdict was against the weight of the evidence, and the defendant could not have received a fair trial, since exculpatory evidence was missing. A simple instruction to the jury by the court that evidence is missing, which has occurred in this case is not a cure.
4. Exculpatory evidence missing is a hat, which the defendant is accused of wearing, that was located next to the loading dock doors, that the defendant is accused of trying to break into, and gloves that the individual who was attempting to break into the courthouse wearing.
5. sheriff CYPRIAN IGWE testified on may 12, 2009, at the defendant's trial to collecting the missing evidence, which places the hat and gloves in the possession of the commonwealth. IF the missing items would have been secured and preserved properly, DNA testing would have insured the defendant's innocence.

6. materiality inquiry in connection with a claimed brady violation is not just a matter of determining whether, after discounting the inculpatory evidence in light of the undisclosed evidence, the remaining evidence is sufficient to support the jury's conclusions; rather, the question is whether the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. [per Flaherty, c.j., with one justice concurring and three justice concurring in result.] com. v. simmons, 804 A.2d 625, 569 pa.405, sup. 2001.

7. evidence is "material" to guilt or punishment, and must be disclosed to defendant if favorable, when there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; "reasonable probability" is probability sufficient to undermine confidence in the outcome. Com. v. jones, 637 A.2d 1001, 432 pa. super. 1994.

8. under brady v. Maryland, 373 U.S. 83 [1963]. A defendant is entitled to all exculpatory evidence, and the defendant asserts that with the missing favorable evidence, verdict would have been different. Failure of the commonwealth to disclose exculpatory material warrants dismissal of all charges, or new trial.

9. no pro se rule require a defendant to demonstrate prejudice to establish his entitlement to preclusion of evidence under the mandatory discovery rule. Comm. v. Galloway, 771 A2d 65, super. 2001. Criminal law 627.8 [6].

COUNSEL IS DEEMED INEFFECTIVE

1. counsel was not working in the best interest of this defendant. Counsel had a legal obligation to move for dismissal when counsel was informed that the defendant had not been brought to trial within **365 DAYS**, which is a violation of PA. R. CRIM. P. 600 [G]. commonwealth v. marcone, 487 pa. 572, 410 A.2d 759 [1980]. Pennsylvania code of professional responsibility cannon 6: D6-101 [1977]. And also for not arguing that there is a brady violation concerning missing evidence favorable to the defense. Brady v. Maryland, 373 U.S.83 [1963].

2. evidence that would tend to exculpate a defendant or reduce the penalty may not, as a constitutional matter. Be withheld, and a rule of court to the contrary must give way. [per pomeroy, j., with two justice concurring and three justice concurring in the result.] com. V. martin, 348 A2d 391, 465 pa. 134, sup. 1975.

3.evidence is always relevant and material to defense, for purpose of discovery request, if it tends to show that specific crime of which defendant stands accused was committed by someone else. Com. V. novasak, 606 A.2d 447, 414 pa. super. 21, super. 1992.

4.the defendant made a request for the pre-trial discovery on july 2, 2008, and has not received the exculpatory hat and gloves involved in this case. Suppression of evidence favorable to the defendant has ensued prejudice, by not being able to present evidence that would have exonerated the defendant.

5.suppression by prosecution of evidence favorable to accused violates due process where evidence is material either to guilt or to punishment, irrespective of good faith of the prosecution. Comm.. v. freeman, 433 A.2d 499, 289 pa. super. 1981.

FURTHER SUPPORTING EVIDENCE

1.counsel Ronald j. gross, esq.,is ineffective for not objecting to the altered vhs surveillance tape, and the altered dvd version. On January 26, 2009, counsel Ronald j. gross, esq.,the defendant, and the district attorney seth bortner, esq.,reviewed the vhs surveillance tape at the York county courthouse inside judge Thomas h. kelley's conference room, after viewing the vhs surveillance tape, attorney Ronald gross,esq.,expressed to the court that all his client was doing was walking and not committing any crime, SEE: transcript date January 26, 2009, judge Thomas h. kelley's court room., at the defendant's trial on may 11, 12, 2009, upon viewing the vhs surveillance tape which shows an individual attempting to break into the courthouse, this extra footage was not on the vhs tape on January 26, 2009, which is clearly tampering with evidence. 42 pa. c.s.a. 4911. Tampering with public records or information.

2.the defendant's mother mrs.eloise white, has a copy of the dvd version, and still pictures from the dvd version, the defendant has viewed the dvd version several times, which shows the defendant being arrested, and later on the dvd shows an individual of a caucasian descent attempting to break into the courthouse, but during trial on may 11,12, 2009, upon viewing the dvd version, which shows an individual attempting to break into the courthouse, and then shows the defendant being arrested, the arrest and the attempt of the individual trying to break into the courthouse have been switched to gain an conviction. The defendant was in custody befor the attempted break in occurred. This is clearly tampering with tangible evidence and altering evidence. Commonwealth v. barger, 249 PA Super 59, 375 A.2d. 756 (1977). Which has prejudiced the defendant severely.

3. The commonwealth never established a chain of custody with the hat, gloves, and VHS surveillance tape or with the DVD version. The defendant asserts that prejudice has ensued by the commonwealth's willfully suppressing or withholding favorable exculpatory evidence, and altering evidence to obtain an conviction.

4. The court error when it denied the defendant's mother to testify to the still pictures she took off of the DVD version, the defendant's mother could have testified to wear the pictures come from, and the jury should have been allowed to view all evidence involved in this case, the courts denial to allow the still pictures taken from the DVD version was in fact prejudice to the defendant, whether or not the pictures were to blurry to establish identity, pictures clearly showed the complexion of the individual attempting to break into the courthouse was of a lighter skin tone then the defendant. Com. V. Jones, 637 A.2d. 1001, 432 PA. Super. 1994. Criminal Law 700 (2.1)

5. The defendant did not have a fair and impartial jury of his peers, all jurors was of a Caucasian descent, and the defendant is a black male, this was an extravagant prejudice to the defendant.

6. On January 26, 2009, counsel Ronald J. Gross, esq., the defendant, and district attorney Seth Bortner, esq., reviewed the VHS tape o the attempted break in of the courthouse, which clearly showed cpl. Shawn Brady assaulting the defendant, by striking the defendant on the head with his collapsible baton, while the defendant was laying on the ground and handcuffed. The defendant viewed the DVD version earlier of the attempted break in of the York county courthouse, which also showed the defendant being assaulted by cpl Shawn Brady, butr upon viewing the VHS tape and the DVD version May 11, 12, 2009, at the defendants trial there had been alterations done to the VHS surveillance tape and the DVD version, since the assault on the defendant by cpl Shawn Brady had been removed from the VHS surveillance tape and the DVD version. This act is clearly altering and tampering with tangible evidence. The defendants mother has a copy of the DVD version, that was given to her by John P. Nebblett, esq., which clearly shows the defendant being assaulted. The defendant did not receive a fair trial by the court allowing the prosecution to introduce or show tainted evidence, which has extremely prejudiced the defendant. 42 PA. C.S.A. 4911 Tampering with public records or information. Commonwealth v. Barger, 249 PA Super. 59, 375 A.2d 756 (1977)

7. The VHS surveillance tape and DVD version was unsealed at trial on may 11, 2009, the VHS tape and DVD version was out of the defendants and Jury's view for an entered day unsealed. The chain of custody has been broken, which has prejudiced the defendant. *BY ALLOWING THE COMMONWEALTH TO SWITCH THE VHS AND DVD SURVEILLANCE, THE VHS AND DVD SURVEILLANCE WAS VIEWED ON MAY 12, 2009,*

RELIEF SOUGHT

The defendant Kenneth w. Ashford, respectfully request that the verdict be vacated, and or grant a new trial, and dismiss all charges for the reason stated in this motion for arrest of judgment, for the commonwealth's failure to disclose exculpatory material, which deprived the defendant of a fair trial. Com. v. Johnson, 815 A.2d 563, 572 pa. pa. 283, sup. 2002., and for the defendants ineffective counsels refusal to argue rule 600 [G], and other issue that have prejudiced the defendant that are stated inside this motion for arrest of judgment, concerning alterations of the VHS surveillance tape and the DVD version.

I, Kenneth w. Ashford, duly swear that the above statements given are correct to the best of my knowledge, information, and belief.

DATE: *MAY 15, 2009*

Kenneth w. Ashford

KENNETH W. ASHFORD, PRO SE

3400 CONCORD ROAD
YORK, PA. 17402

PROOF OF SERVICE

I, Kenneth w. Ashford, declare that I am mailing the foregoing motion for arrest of judgment to the following individuals by U.S. mail on this date:

CLERK OF COURT
45 NORTH GEORGE STREET
YORK, PA. 17401

YORK COUNTY DISTRICT ATTORNEY OFFICE
45 NORTH GEORGE STREET
YORK, PA. 17401

JUDGE THOMAS H. KELLEY
45 NORTH GEORGE STREET
YORK, PA. 17401

DATE: *MAY 15, 2009*

Kenneth W. Ashford

KENNETH W. ASHFORD, PRO SE
3400 CONCORD ROAD
YORK, PA. 17401

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF
PENNSYLVANIA

CP-67-CR-2467-2008

vs.

KENNETH W. ASHFORD,
Defendant

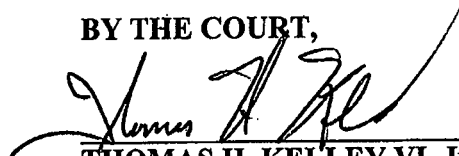
ORDER

AND NOW, TO WIT, this 26th day of May 2009, after a review of Defendant's Motion For Arrest of Judgment, the motion is returned to Defendant. Defendant is represented by Ronald Gross, Esquire.

Attorney Gross has not withdrawn as Defendant's counsel. Attorney Gross or an attorney retained by Defendant may file the motion after entering their appearance. Defendant may proceed pro se after filing the appropriate motion. If Defendant does not wish to proceed pro se and can not afford an attorney, Defendant is directed to apply for counsel through the Public Defender's Office.

The Court hereby directs the Clerk of Courts to provide copies of this Order to Defendant and Attorney Gross.

BY THE COURT,


THOMAS H. KELLEY VI, Judge

RECEIVED/FILED
YORK COUNTY
JUDICIAL CENTER

2009 MAY 27 AM 11:36

DON O'SHELL
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF YORK COUNTY PENNSYLVANIA
CRIMINAL DIVISION

RECEIVED/FILED
YORK COUNTY
JUDICIAL CENTER
2009 JUN 12 PM 1:52
DON O'SHELL
CLERK OF COURTS

commonwealth of Pennsylvania

vs.

kenneth w. Ashford, *PRO SE*

NO. CP-67- CR-2467-2008

SUPPLEMENTAL MOTION

AND NOW this 12 day of June, 2009, comes the defendant Kenneth w. Ashford, pro se, who presents the following facts:

1. the defendant was arrested on march 17, 2008, and charged with several charges related to an attempt to break into the york pa. county courthouse.
2. the defendant filed a motion for arrest of judgment on may 15, 2009, the judge returned a order, and the motion, because the defendant has a counsel of record, but allowed the defendant to file the motion for arrest of judgment once the defendant has filed the proper motion to withdraw counsel, or retain another counsel to file the motion. the defendant has filed a motion to withdraw counsel on june 1, 2009, which is still pending.
3. the defendant has resubmitted the motion for arrest of judgment on june 1, 2009, and now submits that the prosecution has done nothing other than make blanket assertions.
4. new trial is warrant on challenge to weight of evidence only if verdict is so contrary to evidence as to shock one's sense of justice. Com. V. fox, 619 A.2d 327, 422 Pa. super. 224, super. 1993, appeal denied 634 A.2d 222, 535 Pa. 659. Criminal law 936 [1]. the defendant asserts that the verdict was against the weight of the evidence.
5. none of the witnesses that testified at the defendant's trial on may 11, 12, 2009, to seeing the defendant at the doors of the courthouse with a screwdriver on march 17, 2008, attempting to break into the courthouse. verdict cannot rest on disbelief of some testimony by jury; there must be evidence that, if believed, is strong enough to support finding of guilt beyond reasonable doubt. Com. V. wiley, 432 A.2d 220, 288 Pa. super 397. Super. 1981. Criminal law 561 [1].

6. there was doubt that should have shocked the courts senses, the evidence offered to support guilty verdict is in contradiction to physical fact, then evidence is insufficient as of law. Com. V. smith, 853 A.2d 1020, super. 2004. Criminal law.

7. no physical or circumstantial evidence placed the defendant at the doors of the courthouse attempting to break into the courthouse, and there was exculpatory evidence missing that could have exonerated the defendant. Hence the verdict should be vacated and all charges dismissed.

*I, KENNETH W. ASHFORD, PRO SE, DULY SWEAR THAT THE ABOVE STATEMENT
GIVEN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE,
INFORMATION, AND BELIEF.*

DATE: JUNE 12, 2009

Kenneth W. Ashford
KENNETH W. ASHFORD, PRO SE
3400 CONCORD ROAD
YORK, PA. 17402

PROOF OF SERVICE

I, Kenneth w. Ashford, declare that I am mailing the foregoing *supplemental motion* to the following individuals by U.S. mail on this date:

CLERK OF COURT
45 NORTH GEORGE STREET
YORK, PA. 17401

YORK COUNTY DISTRICT ATTORNEY OFFICE
45 NORTH GEORGE STREET
YORK, PA. 17401

JUDGE THOMAS H. KELLEY
45 NORTH GEORGE STREET
YORK, PA. 17401

DATE: *June 12, 2009*

Kenneth W. Ashford

KENNETH W. ASHFORD, PRO SE
3400 CONCORD ROAD
YORK, PA. 17401

Kenneth W. HSHFORU, # 29197
"THIS CORRESPONDENCE ORIGINATES
FROM AN INMATE INSTITUTION"
3400 CONCORD ROAD
YORK, PA. 17402

CLERK OF COURT
YORK COUNTY COURTHOUSE
45 NORTH GEORGE STREET
YORK, PA. 17401

RECEIVED/FILED
YORK COUNTY
JUDICIAL CENTER
2009 JUN 12 PM 1:52
DON O'SHELL
CLERK OF COURTS

cm

IN THE COURT OF COMMON PLEAS OF YORK COUNTY,
PENNSYLVANIA

COMMONWEALTH : No. CP-67-CR-0002467-2008
VS :
KENNETH ASHFORD :

York, PA, Monday, June 29, 2009

Before the Honorable Thomas H. Kelley, VI, Judge

APPEARANCES:

JUSTIN F. KOBESKI, Esquire
Assistant District Attorney
For the Commonwealth

RONALD A. GROSS, Esquire
For the Defendant

* * *

TRANSCRIPT OF PROCEEDINGS

* * *

Reported by:

Beth L. Ness, RMR
Official Court Reporter

1 ATTORNEY KOBESKI: Your Honor, the next
2 case is the Commonwealth versus Kenneth Ashford, case
3 number 2467 of 2008. I believe this is the scheduled
4 date and time to address defense counsel's motion to
5 withdraw as counsel.

6 THE COURT: Is that what it is? I
7 thought it was a litany of motions that have been filed
8 by the Defendant pro se.

9 ATTORNEY GROSS: Your Honor, he did, and
10 I filed a motion to withdraw on top of that. And I
11 think, with all due respect, if we would hear my motion
12 first and then hear his motion, I think that might make
13 the most sense.

14 Your Honor, in this case I filed the
15 motion to withdraw appearance of counsel upon request of
16 my client, and I received information that he filed with
17 the Clerk of Courts which was forwarded by your office
18 alleging my ineffectiveness, then order from the
19 Superior Court he had filed a motion as well which then
20 came back to us dated June 5.

21 This has been a pattern throughout
22 representation. I believe that Mr. Ashford wants me to
23 withdraw. I wish to withdraw. I don't believe there's
24 any opposition from the Commonwealth, and we're not at a
25 critical stage because sentencing is coming up. There's

1 enough time for him to secure counsel if he chooses.

2 I believe he does say he thinks he can do
3 a better job by himself, but I would ask that I
4 withdraw. I have prepared a motion as well authorizing
5 my withdrawal of counsel and three copies if I can bring
6 that towards you.

7 THE COURT: Okay. All right. All right,
8 Mr. Ashford. You do want him to withdraw as counsel; is
9 that correct?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you understand at this
12 point in time you're going to be proceeding pro se which
13 means representing yourself?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. You understand that if
16 you represent yourself and continue to represent
17 yourself, you're going to be held to the same standards
18 as a lawyer would be held to, knowledgeable about the
19 law and how to enforce your rights? Do you understand
20 that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Obviously you have the
23 right to counsel, so you may seek to employ counsel. If
24 you cannot afford counsel, counsel can be appointed for
25 you through the public defender's office, but you need

1 to make application to the public defender's office. Do
2 you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. You can fill out an
5 application down at the prison, but you need to qualify
6 financially. If you can afford an attorney on your own,
7 you should get an attorney as soon as possible. Do you
8 understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Because right now, because
11 you have asked him to withdraw as counsel, you've sought
12 his removal as counsel, you are really proceeding pro se
13 because you haven't had anyone to say that they are
14 going to enter their appearance on your behalf. Do you
15 understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You've just kept filing pro
18 se motions with me. In fact, frankly, if I don't get a
19 motion from you every two or three days, I feel like I'm
20 not loved anymore. I'm being facetious when I say that.

21 What you need to do is you need to
22 consolidate your motions into one motion, and
23 furthermore, if would you like counsel to represent you,
24 you need to get counsel as soon as possible. Do you
25 understand, Mr. Ashford?

1 THE DEFENDANT: Yes. I understand.

2 THE COURT: I'm going to issue this
3 written order.

4 And now, to wit, this 29th day of June
5 2009, upon request for leave of Court to withdraw
6 appearance of court, it's hereby ordered that Ronald J.
7 Gross, Esquire, is removed as counsel of record for the
8 Defendant.

9 Furthermore, I've advised the Defendant
10 of his right to counsel and the fact that if he cannot
11 afford counsel, counsel can be appointed through the
12 public defender's office.

13 I have signed that order. I'll give it
14 to the Clerk of Courts. It will be scanned and then
15 will be disseminated to the appropriate parties.

16 In the interim, Mr. Ashford, again, if
17 you wish to have counsel, you need to make application
18 or get private counsel to enter his or her appearance on
19 your behalf as soon as possible. When do I have
20 sentencing scheduled for?

21 ATTORNEY GROSS: Monday morning. I would
22 suspect --

23 THE COURT: Are you going to be ready to
24 go forward on Monday?

25 THE DEFENDANT: Excuse me?

1 not limited to, ineffective assistance if that's what
2 your allegation is, and we'll deal with it all in one
3 fell swoop. Okay, sir?

4 THE DEFENDANT: Yes, sir, Your Honor.

5 THE COURT: So I'm going to see you on
6 Monday. We'll do sentencing, and then thereafter we'll
7 incorporate all your motions. Actually, you might do
8 well for yourself to kind of put them all in one post
9 sentence motion. You might do even better for yourself
10 if you got counsel.

11 THE DEFENDANT: I can read from the
12 motion that I have written out.

13 THE COURT: Okay. That's fine. We'll
14 deal with that after sentencing. Okay?

15 THE DEFENDANT: Well, I thought the
16 motion was to be heard before sentencing.

17 THE COURT: In arrest of judgment?

18 THE DEFENDANT: Yeah.

19 ATTORNEY KOBESKI: Your Honor, I believe
20 that would be more properly addressed in a post sentence
21 motion as Your Honor has suggested.

22 THE COURT: I guess I could do it now,
23 but I think it's better to just deal with it all at one
24 time, you know. Just for the sake of judicial economy,
25 I need to deal with it all at one time. Okay? I'm not

1 saying I'm not going to deal with it, sir. what I'm
2 saying is I'm telling you we'll hear it all subsequent
3 to sentencing. okay?

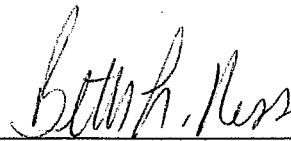
4 THE DEFENDANT: All right.

5 THE COURT: Fair enough. Thank you. All
6 right. We'll see you on Monday for purposes of
7 sentencing.

8 (The proceeding concluded.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.



Beth L. Ness, RMR
Official Court Reporter

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

COMMONWEALTH

:

CR-2467-2008

:

VS.

:

CRIMINAL ACTION - LAW

:

KENNETH ASHFORD

:

:

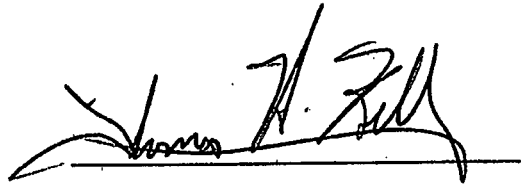
ORDER

AND NOW, this 29th Day of June, 2009, upon the herein.

Request for Leave of Court to Withdraw Appearance of Counsel it is hereby Ordered that

Ronald J. Gross, Esquire is removed as counsel of record for the Defendant.

BY THE COURT,



J. Thomas H. Kelley, VI